

# *The* **NORTH CAROLINA REGISTER**

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**PROPOSED RULES**

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**Environment, Health, and Natural Resources**

**Geologists**

**Human Resources**

**Justice**

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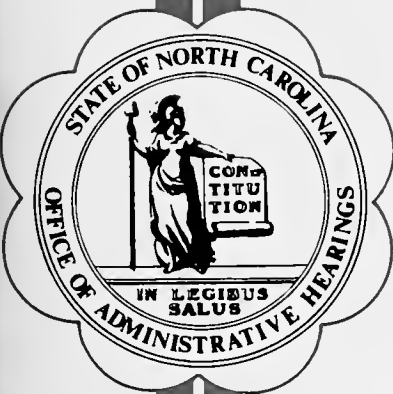
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**ISSUE DATE: December 1, 1992**

**Volume 7 • Issue 17 • Pages 1721 - 1828**



## **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **ADOPTION AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of  
Administrative Hearings, ATTN: Rules Division, P.O.  
Drawer 27447, Raleigh, North Carolina 27611-7447, (919)  
733-2678.

# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
**Publication Schedule**  
*(August 1992 - December 1993)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
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12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
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11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

*G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JRD:LLT:NT:mrj

DJ 166-012-3

92-4319

November 6, 1992

David A. Holec, Esq.

City Attorney

P. O. Box 1388

Lumberton, North Carolina 28359-1388

Dear Mr. Holec:

This refers to the annexation [Ordinance No. 1359 (1992)] to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 22, 1992.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne

Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JRD:GS:TGL:gmh  
DJ 166-012-3  
92-4352

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

November 9, 1992

Kenneth R. Hoyle, Sr., Esq.  
Lee County Attorney  
P. O. Box 1968  
Sanford, North Carolina 27331-1968

Dear Mr. Hoyle:

This refers to the use of the optical scan method of voting in Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 22, 1992.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to adopt rule cited as 10 NCAC 26B .0123, with changes from the proposed text noticed in the Register, Volume 7, Issue 13, pages 1294-1295.

*The proposed effective date of this action is March 1, 1993.*

*Reason for Proposed Action:* This adoption will allow Medicaid to pay for all components of the drug therapies except for the drugs in a package per diem rate. This single coverage designation simplifies access to care for Medicaid recipients, relieving the recipient and the attending physician from having to contact multiple agencies to arrange care.

*Comment Procedures:* Written comments concerning this adoption must be submitted by January 1, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

**CHAPTER 26  
MEDICAL ASSISTANCE**

**SUBCHAPTER 26B - MEDICAL  
ASSISTANCE PROVIDED**

**SECTION .0100 - GENERAL**

**.0123 HOME INFUSION THERAPY**

(a) Self-administered Home Infusion Therapy (HIT) is covered when it is medically necessary and provided through an enrolled HIT agency as prescribed by a physician. "Self-administered" means that the patient or an unpaid primary caregiver is capable, able, and willing to administer the therapy following teaching and with monitoring. The following therapies are included in this coverage when self-administered:

- (1) Total parenteral nutrition;
- (2) Enteral nutrition;
- (3) Intrathecal and intravenous

chemotherapy;

- (4) Intravenous antibiotic therapy;
- (5) Pain management therapy, including subcutaneous, epidural, intrathecal, and intravenous pain management therapy.

(b) An agency must be a home care agency licensed in North Carolina for the provision of infusion nursing services to qualify for enrollment as a HIT provider.

In addition to enrolled HIT providers, agencies enrolled to provide durable medical equipment may provide the supplies, equipment, and nutrient formulae for enteral infusion therapy.

Authority G.S. 108A-25(b); 42 C.F.R. 440.230; 42 C.F.R. 440.260.

\*\*\*\*\*

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to adopt rule cited as 10 NCAC 26B .0124.

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 1:30 p.m. on January 4, 1993 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.*

*Reason for Proposed Action:* This rule insures that holders of CON who violate the CON agreement, and who become certified, are not enrolled in the Medicaid program.

*Comment Procedures:* Written comments concerning this adoption must be submitted by January 4, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

**SUBCHAPTER 26B - MEDICAL  
ASSISTANCE PROVIDED**

**SECTION .0100 - GENERAL**

**.0124 INSTITUTIONAL HEALTH SERVICES**

No provider may be enrolled in the Medicaid Program for services required under the Certificate of Need Law unless those services meet the requirements of G.S. 131E-190.

Statutory Authority G.S. 108A-25(b); 108A-54.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 50B .0311 and .0313.*

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 1:30 p.m. on January 4, 1993 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.*

***Reason for Proposed Action:***

*10 NCAC 50B .0311: Amendment will revise rule to incorporate rules for considering assets owned by individuals who are incompetent.*

*10 NCAC 50B .0313: Rule needs to be revised to correct an error. The Rule currently addresses tax refunds and then goes into the rules for Passalong of Social Security benefits without introductory statements. The proposed amendment makes this correction and adds:*

- - *the federally mandated passalong of Cost of Living Adjustments (COLA's ) for disabled widows/widowers who lost SSI benefits effective January, 1984, as a result of the elimination of the Actuarial Reduction Formula,*
- - *the passalong of COLA's for categorically needy M-AABD clients who would be eligible for SSI if all RSDI COLA's since they received SSI and/or State/County Special Assistance concurrently with RSDI were disregarded, and*
- - *the special RSDI passalong for disabled widows/widowers/surviving divorced spouses who are not yet entitled to Medicare Part A.*

*Comment Procedures: Written comments concerning this amendment must be submitted by January 4, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

**CHAPTER 50 - MEDICAL ASSISTANCE**

**SUBCHAPTER 50B - ELIGIBILITY DETERMINATION**

**SECTION .0300 - CONDITIONS FOR ELIGIBILITY**

**.0311 RESERVE**

North Carolina has elected the option under Section 1902(f) of the Social Security Act to limit Medicaid eligibility for the aged, blind or the disabled to individuals who meet eligibility requirements more restrictive than those under Supplemental Security Income. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.
  - (a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:
    - (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
    - (ii) A durable power of attorney, valid in North Carolina and in any state in



which such resource is located, has been granted to a person who is authorized and able to exercise such power.

- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services of a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

- (c) When a Medicaid application is filed on behalf of an individual who:

- (i) is alleged to be mentally incompetent,
- (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence is supported by a physician's certification or other competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, the resources shall be excluded except as provided in Sub-items (1)(d) or (e) of this Rule.

- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the

month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in Chapters 1 or 35A of the North Carolina General Statutes.

- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual that the member was in fact incompetent. Any such showing of incompetence is subject to rebuttal by competent evidence as specified herein and in Sub-item (1)(c) of this Rule.

- (2) The limitation of resources held for reserve for the budget unit shall be as follows:

- (a) For Family and Children's related categorically needy cases, one thousand dollars (\$1,000) per budget unit;
- (b) For aged, blind or disabled cases and Family and Children's related medically needy cases, one thousand five hundred dollars (\$1,500) for a budget unit of one person, two thousand two hundred fifty dollars (\$2,250) for a budget unit of two persons and increases of one hundred dollars (\$100.00) for each additional person in the budget unit over two, not to exceed a total of three thousand, fifty dollars (\$3,050).

- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:

- (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later:

- (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy and medically needy aid to the aged, blind, or disabled cases protected by grandfathered provisions are:
  - (a) Cash on hand;
  - (b) The current balance of savings accounts, except savings of a student saving his earnings for educational purposes;
  - (c) The current balance of checking accounts;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
  - (e) Equity in motor vehicles, including motor homes, determined to be non-essential according to Rule .0403 of this Subchapter;
  - (f) Equity in excess of one thousand dollars (\$1,000) in motor vehicles, including motor homes, determined to be essential according to Rule .0403 of this Subchapter;
  - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (h) Negotiable and salable promissory notes and loans;
  - (i) Trust funds;
  - (j) The portion of lump sum payments remaining after the month of receipt;
  - (k) Individual Retirement Accounts or other retirement accounts or plans;
  - (l) Equity in real property not used as the homesite or not producing an income;
  - (m) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;
  - (n) Salable remainder interest in life-estate property not used as the budget unit's homesite;
- (o) Patient accounts in long term care facilities.
- (5) Resources counted in the determination of financial eligibility for aid to categorically needy aged, blind or disabled cases not protected by grandfathered provisions are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
  - (e) Trust funds;
  - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (g) Negotiable and salable promissory notes and loans;
  - (h) Revocable burial contracts and burial trusts;
  - (i) The portion of lump sum payments remaining after the month of receipt;
  - (j) Individual Retirement Accounts or other retirement accounts or plans;
  - (k) Patient accounts in long term care facilities;
  - (l) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
  - (m) Equity in real and/or personal property when the combined equities is six thousand dollars (\$6,000) or less and the property does not yield a net annual income of at least six percent of the equities;
  - (n) Equity in real and/or personal property when the combined equities exceed six thousand dollars (\$6,000);
  - (o) Equity in personal property, subject to (5) (m) and (n) of this Rule, is limited to:

- (i) Mobile homes not used as homesite,
- (ii) Boats, boat trailers and boat motors,
- (iii) Campers,
- (iv) Farm and business equipment;
- (p) Equity in real property, subject to (5) (m) and (n) of this Rule, is limited to:
  - (i) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;
  - (ii) Fee simple interest;
  - (iii) Salable remainder interest;
  - (iv) Tenancy by the entireties interest only.
- (6) Resources counted in the determination of financial eligibility for aid to medically needy aged, blind or disabled cases not protected by grandfathered provisions are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand dollars (\$1,000);
  - (e) Trust funds;
  - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (g) Negotiable and salable promissory notes and loans;
  - (h) Revocable burial contracts and burial trusts;
  - (i) The portion of lump sum payments remaining after the month of receipt;
  - (j) Individual Retirement Accounts or other retirement accounts or plans;
  - (k) Patient accounts in long term care facilities;
  - (l) Equity in motor vehicles determined to

- be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
- (m) Equity in real property and personal property that does not produce a net annual income;
- (n) Equity in personal property, subject to (6)(m) of this Rule, is limited to:
  - (i) Mobile homes not used as homesite,
  - (ii) Boats, boat trailers and boat motors,
  - (iii) Campers,
  - (iv) Farm and business equipment;
- (o) Equity in real property, subject to (6)(m) of this Rule, is limited to interest in real estate other than that used as the budget unit's homesite and includes:
  - (i) Fee simple interest,
  - (ii) Tenancy by the entireties interest only,
  - (iii) Salable remainder interest,
  - (iv) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons.
- (7) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
  - (d) The portion of lump sum payments remaining after the month of receipt;
  - (e) Cash value of life insurance policies owned by the budget unit;
  - (f) Revocable trust funds;
  - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (h) Negotiable and salable promissory notes and loans;

- (i) Revocable pre-paid burial contracts;
  - (j) Patient accounts in long term care facilities;
  - (k) Individual Retirement Accounts or other retirement accounts or plans;
  - (l) Equity in non-essential personal property limited to:
    - (i) Mobile homes not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment;
    - (v) Equity in excess of one thousand five hundred dollars (\$1,500) in one motor vehicle determined to be essential under Rule .0403 of this Subchapter;
    - (vi) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
  - (m) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
    - (i) Fee simple interest,
    - (ii) Tenancy by the entireties interest only,
    - (iii) Salable remainder interest,
    - (iv) Value of burial plots.
- (8) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
- (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the currently monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
  - (e) Trust funds;
  - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (g) Negotiable and salable promissory notes and loans;
  - (h) Revocable prepaid burial contracts;
  - (i) Patient accounts in long term care facilities;
  - (j) Individual Retirement Accounts or other retirement accounts or plans;
  - (k) Equity in non-essential, non-income producing personal property limited to:
    - (i) Mobile home not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment,
    - (v) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
  - (l) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
    - (i) Fee simple interest,
    - (ii) Tenancy by the entireties interest only,
    - (iii) Salable remainder interest,
    - (iv) Value of burial plots.
- Authority: G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704, 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.*
- .0313 INCOME**
- (a) Income from the following sources shall be counted in the calculation of financial eligibility:
- (I) Unearned.
    - (A) RSDI,
    - (B) Veteran's Administration,
    - (C) Railroad Retirement,
    - (D) Pensions or retirement benefits,
    - (E) Workmen's Compensation,
    - (F) Unemployment Compensation,
    - (G) Support Payments,
    - (H) Contributions,
    - (I) Dividends or interest from stocks, bonds, and other investments,
    - (J) Trust fund income,
    - (K) Private disability or employment compensation,
    - (L) That portion of educational loans, grants, and scholarships for maintenance,
    - (M) Work release,
    - (N) Lump sum payments,
    - (O) Military allotments,
    - (P) Brown Lung Benefits,
    - (Q) Black Lung Benefits,
    - (R) Trade Adjustment benefits,

- (S) SSI when the client is in long term care,
  - (T) VA Aid and Attendance when the client is in long term care,
  - (U) Foster Care Board payments in excess of state maximum rates for M-AF clients who serve as foster parents,
  - (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d),
  - (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d),
  - (X) Sheltered Workshop Income,
  - (Y) Loans if repayment of a loan and not counted in reserve,
  - (Z) Income deemed to Family and Children's clients.
- (2) Earned Income.
- (A) Income from wages, salaries, and commissions,
  - (B) Farm Income,
  - (C) Small business income including self-employment,
  - (D) Rental income,
  - (E) Income from roomers and boarders,
  - (F) Earned income of a child client who is a part-time student and a full-time employee,
  - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents,
  - (H) Earned income tax credits for the Aged, Blind or Disabled only,
  - (I) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in (1) or (2) of this Rule will be considered available unless specifically excluded by (b) of this Rule, or by regulation or law.
- (b) Income from the following sources shall not be counted in the calculation of financial eligibility:
- (1) Earned income of a child who is a part-time student but is not a full-time employee;
  - (2) Earned income of a child who is a full-time student;
  - (3) Incentive payments and training allowances made to WIN training participants;
  - (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
  - (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
  - (6) Earnings of M-AABD clients who are participating in ADAP (Adult Developmental Activity Program) training programs for a specified period;
  - (7) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work, sporadic babysitting, etc.;
  - (8) Relocation payments;
  - (9) Value of the coupon allotment under the Food Stamp Program;
  - (10) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. If home grown produce is sold, count as earned income;
  - (11) Benefits received from the Nutrition Program for the Elderly;
  - (12) Food Assistance under the Child Nutrition Act and National School Lunch Act;
  - (13) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
  - (14) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships

- granted from private donations to the college, etc., except for any portion used or designated for maintenance;
- (15) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
- (16) Benefits received under Title VII of the Older Americans Act of 1965;
- (17) Payments received under the Experimental Housing Allowance Program (EHAP);
- (18) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (19) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (20) Income of a child under 21 in the budget unit who is participating in JTPA and is receiving as a child;
- (21) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L.92-254, P.L. 93-134 or P.L. 94-540;
- (22) Payments to Indian tribe members as permitted under P.L. 94-114;
- (23) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (24) SSI except for individuals in long term care;
- (25) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (26) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his affairs. Such benefits must be accounted for separate from the payee's own income and resources;
- (27) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (28) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (29) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (30) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (31) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (32) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (33) Adoption assistance;
- (34) Incentive payments made to a client participating in a vocational rehabilitation program;
- (35) Title XX funds received to pay for services rendered by another individual or agency;
- (36) Any amount received as a refund of taxes paid;:
- ~~(A) For M AABD categorically needy clients who meet the criteria in (B) below, the amount of increase in RSDI resulting from elimination of the actuarial reduction factor in calculating the amount of RSDI they received in January 1984 plus the amount of all subsequent RSDI cost of living increases. This income ceases to be counted up to three months prior to the date the individual applies to have it not counted; provided he meets the criteria in (B) below.~~
- ~~(B) For the RSDI increases specified in (A) above not to be counted, the client must:~~
  - ~~(i) Have lost SSI eligibility effective January 1984 due to an RSDI increase caused by elimination of the actuarial reduction factor;~~
  - ~~(ii) Would currently be eligible for SSI if the increase in RSDI specified in (i) and all subsequent RSDI cost of living increases were deducted; and~~
  - ~~(iii) No later than June 30, 1987, have applied to have these increases not~~

counted:

(37) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a disabled widow or widower resulting from the 1983 Actuarial Reduction Formula (ARF) which caused the loss of SSI effective January, 1984, for an M-AA, M-AB, or M-AD client:

- (A) Who received a disabled widow or widower's benefit and SSI simultaneously in 1983 as identified by the Social Security Administration, and
- (B) Who lost SSI because of the elimination of the ARF, and
- (C) Who is not now eligible for SSI, and
- (D) Who was between 50 and 59 years of age in 1983, and
- (E) Who applied for Medicaid no later than June 30, 1988, and
- (F) Who is classified as Categorically Needy.

(38) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a client or his financially responsible spouse or parent(s), who:

- (A) Is classified as Categorically Needy for the M-AA, M-AB, or M-AD programs, and
- (B) Lost SSI or State/County Special Assistance (S/C-SA) for any reason, and
- (C) Would currently be eligible for SSI or S/C-SA if all COLA's since he was last eligible for and received RSDI and SSI or S/C-SA concurrently were disregarded.

(39) The RSDI benefit for a client who:

- (A) Is a disabled widow or widower or surviving divorced spouse, and
- (B) Received SSI for the month prior to the month he began receiving RSDI, and
- (C) Would continue to be eligible for SSI if the RSDI benefit were not counted, and

(D) Is not entitled to a Medicare Part A.

(c) Verification of the receipt and amount of the income shall be made through documentary evidence provided by the client or from the source of the income.

(d) Income levels for purposes of establishing financial eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and

medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;
- (2) An individual living in a long term care facility or other medical institution shall be allowed a thirty dollar (\$30.00) income level, and a couple in the same room in a long term care facility shall be allowed a sixty dollar (\$60.00) income level;
- (3) Individuals who are in a long term care facility for a temporary period of six months or less shall be allowed the income level provided by statute in addition to the thirty dollar (\$30.00) level.

*Authority G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 45 C.F.R. 233.20; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d); P.L. 99-272; Section 12202.*

## TITLE 12 - DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to adopt rule cited as 12 NCAC 7D .0205 and amend rule cited as 12 NCAC 7D .0809.*

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 11:00 a.m. on December 16, 1992 at the State Bureau of Investigation Conference Room, 3320 Old Garner Road, Raleigh, NC 27626.*

*Reason for Proposed Actions:*

12 NCAC 7D .0205 - Requires a firm, association, or corporation which is engaging in or will be engaging in the private protective services profession to obtain a corporate business license.

12 NCAC 7D .0809 - Permits the use of any standard automatic pistol of 354 caliber or higher.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until December 31, 1992. Written comments may be delivered to or mailed to: James Kirk, Private Protective Services Board, 3320 Old Garner Road, P.O. Box 29500, Raleigh, NC 27626.

## CHAPTER 12 - PRIVATE PROTECTIVE SERVICES

### SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

#### SECTION .0200 - LICENSES:TRAINEE PERMITS

##### .0205 CORPORATE BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74C-2(a) shall submit an application for a corporate business license on a form provided by the Board. This application for license shall call for such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any corporate director, officer, or shareholder who owns 10 percent or more of the outstanding shares of any class of stock; information concerning the past revocation, suspension or denial of a business or professional license to any director, officer, or shareholder who owns ten percent or more of the outstanding shares of any class of stock; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning ten percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, a foreign corporation shall further qualify by filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by the North

Carolina Secretary of State in accordance with G.S. 55-131 and a consent to service of process and pleadings which shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a completed written application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors, officers and shareholders owning 10 percent or more in shares have the requisite good moral character.

(d) Upon satisfactory completion of the background investigation, a corporate business license may be issued. This license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

(e) The corporate business license shall be issued only to the corporation and shall not be construed to extend to the licensing of its officers and employees.

(f) The issuance of the corporate business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which has been issued the corporate business license shall be responsible for assuring compliance with G.S. 74C.

Statutory Authority G.S. 74C-2(a); 74C-5.

#### SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

##### .0809 AUTHORIZED FIREARMS

Armed security officers are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard .38 caliber, .32 caliber or .357 caliber revolver, or any standard semi-automatic pistol of .354 caliber and higher, or any standard 12 gauge shotgun, as long as the officer has completed the basic training course on his respective duty weapon pursuant to 12 NCAC 7D .0807.

Statutory Authority G.S. 74C-5; 74C-13.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S.*



150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to amend rules cited as 12 NCAC 11 .0106, .0202, .0204, .0206, .0301, .0303 and .0306.

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 11:00 a.m. on December 16, 1992 at the State Bureau of Investigations Conference Room, 3320 Old Garner Road, Raleigh, NC 27626-0500.*

### **Reason for Proposed Actions:**

*12 NCAC 11 .0106 - Allow the Board to review experience claimed by an applicant when he is not in possession of a valid license or registration.*

*12 NCAC 11 .0202 - Establishes as a minimum requirement that an applicant hold a license from the Board of Electrical Contractors.*

*12 NCAC 11 .0204 - Requires license renewal applications to be filed not less than 30 days before the expiration of the license.*

*12 NCAC 11 .0206 - Requires a department or division of a firm, association, or corporation to notify the Board of specific employees of the department or division within 5 days of employment.*

*12 NCAC 11 .0301 - Places the responsibility on the licensee to sign and submit a registration application.*

*12 NCAC 11 .0303 - Allows the Board to consider information outside a five year period when considering an applicant's moral character.*

*12 NCAC 11 .0306 - Places the burden on the licensee to provide the proper application forms to registration applicants.*

**Comment Procedures:** *Interested persons may present their views either in writing or orally at the hearing. In addition, the record of hearing will be open for receipt of written comments until December 31, 1992. Written comments must be delivered to or mailed to: James F. Kirk, Alarm Systems Licensing Board, 3320 Old Garner Road,*

*P.O. Box 29500, Raleigh, NC 27626.*

## **CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD**

### **SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS**

#### **.0106 DETERMINATION OF EXPERIENCE**

(a) Experience requirements shall be determined in the following manner: one year's experience = 1,000 hours;

(b) The Board ~~shall~~ may not consider any experience claimed by the applicant if gained while not in possession of a valid license or registration while such license was required by existing or previously existing laws of the United States, any State, or any political subdivision thereof.

*Statutory Authority G.S. 74D-5.*

### **SECTION .0200 - PROVISIONS FOR LICENSEES**

#### **.0202 EXPERIENCE REQUIREMENTS FOR LICENSE**

(a) Applicants for an alarm system license must meet the following minimum requirements which are additional to those specified in G.S. Chapter 74D:

- (1) Establish to the Board's satisfaction two years' experience within the past five years in an alarm systems business as defined in G.S. 74D-2(a); alarm systems installation and service or;
- (2) Successfully pass an oral or written examination deemed by the Board to measure an individual's knowledge and competence in the alarm systems business; and
- (3) ~~Successfully complete~~ Hold a license for either the SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors and maintain said license at all times while licensed by the Alarm Systems Licensing Board.

(b) Any applicant who takes the examination administered by the Board under 12 NCAC 11 .0202(a)(2) and who does not successfully complete said examination after two attempts, must wait six months before being allowed to take the examination again.

(c) Applicants engaged exclusively in monitoring

or responding to alarms may be issued a limited license which authorizes the performance of monitoring and responding functions only. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC Chapter 11 .0202(a).

*Statutory Authority G.S. 74D-5.*

#### **.0204 RENEWAL OR RE-ISSUE OF LICENSES**

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form should be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediate preceding 12 months;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event will renewal be granted more than 90 days after the date of expiration of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by 12 NCAC Chapter 11 .0203 and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials will be submitted to the Board for a final board decision.

*Statutory Authority G.S. 74D-7.*

#### **.0206 RECORDS INSPECTION**

(a) records of a licensee maintained to satisfy the requirements of G.S. Chapter 74D or 12 NCAC Chapter 11 shall be subject to inspection by the administrator or his staff upon demand between 8:00 a.m. and 5:00 p.m. Monday through Friday.

(b) All licensees having registered employees

shall submit a copy of their current quarterly Employment Security Commission NCUI 101-625 to the administrator's office at the same time the form is submitted to the Employment Security Commission; and an additional list of non-Employment Security Commission employees currently employed by the licensee with the dates of employment. Those licensees who do not submit an Employment Security Commission NCUI 101-625 shall submit the names of their employees on a form provided by the Board. The licensee of a firm, association, or corporation that license a department or division shall also submit additional documentation as required by Paragraph (c) of this Rule.

(c) If a department or division of a firm, association, or corporation is licensed, then the licensee must submit a list of all employees who work with the department or division to the Board prior to the issuance of the license. This list must specifically indicate the employees that work with the department or division and are listed on the report required in Paragraph (b) of this Rule. If the department or division hires a new employee, the licensee must report the hiring within 5 days of employment.

(d) ~~(e)~~ All records required to be kept by either Chapter 74D of the General Statutes of North Carolina or by 12 NCAC 11 shall be retained for at least three years.

*Statutory Authority G.S. 74D-5.*

### **SECTION .0300 - PROVISIONS FOR REGISTRANTS**

#### **.0301 APPLICATION FOR REGISTRATION**

(a) Each ~~employer or his designee licensee or~~ his appointed agent shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the board, shall be accompanied by a set of classifiable fingerprints on a standard F.B.I. applicant card, two recent photographs of acceptable quality for identification one inch by one inch in size, statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 48 months and the registration fee required by 12 NCAC Chapter 11 .0302.

(b) The employer of an applicant who is currently registered with another alarm business, shall complete an application form provided by the

Board. This form shall be accompanied by the applicant's multiple registration fee.

(c) The employer of each applicant for registration shall retain a copy of the applicant's application in the individual applicant's personnel file in the employer's office.

*Statutory Authority G.S. 74D-5; 74D-8.*

**.0303 MINIMUM STANDARDS FOR REGISTRATION**

An applicant for registration must:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien; and
- (3) be of good moral character and temperate habits. Any of the following ~~within the last five years~~ shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, larceny, any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of (3) of this Rule, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict of guilty;
- (4) not have been declared by any court of competent jurisdiction incompetent by reason of mental disease or defect; or not have voluntarily committed himself or herself to an institution for treatment of mental disease or defect; or not have been involuntarily committed to an institution for treatment of mental disease or defect by a district court judge. When an individual has been treated and found to have been restored by a psychiatrist, the Board will consider this evidence and determine whether the applicant meets the requirements of this Paragraph.

*Statutory Authority G.S. 74D-5; 74D-8.*

**.0306 RENEWAL OR REREGISTRATION OF REGISTRATION**

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form should be submitted not less than 30 days prior to expiration of the applicant's current card and shall be accompanied by:

- (1) two recent head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size; and
- (2) statements of the result of a local criminal history records search by the City/County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediate preceding ~~12~~ 24 months; and
- (3) the applicant's renewal fee.

(b) ~~Each applicant for reregistration of a registration identification card, or his employer shall complete a form provided by the Board. Each licensee shall provide each applicant for registration or re-registration an application form provided by the Board.~~ This form shall be submitted to the Board and accompanied by:

- (1) two recent head and shoulders photographs of applicant of acceptable quality for identification one inch by one inch in size; and
- (2) the applicant's reregistration fee.

(c) The employer of each applicant for a registration renewal or reregistration shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the applicant's renewal application in the individual's personnel file in the employer's office.

*Statutory Authority G.S. 74D-7; 74D-8.*

TITLE 15A - DEPARTMENT OF  
ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0203, .0209; 10C .0205, .0208, .0305; 10D .0002 - .0003; and adopt rule cited as 15A NCAC 10B .0219.*

*The proposed effective date of this action is July 1, 1993.*

*The public hearings will be conducted at 7:00 p.m. on the following dates and locations:*

January 25, 1993

District 9  
Courthouse  
Columbus, NC

January 26, 1993

District 8  
Morganton Civic Center Auditorium  
Morganton, NC

January 27, 1993

District 7  
High School  
Elkin, NC

February 4, 1993

District 6  
North Stanley High School  
Albemarle, NC

February 2, 1993

District 5  
Courthouse  
Graham, NC

February 3, 1993

District 4  
Courthouse  
Elizabethtown, NC

February 8, 1993

District 1  
Swain Auditorium  
Edenton, NC

February 9, 1993

District 2  
Courthouse  
New Bern, NC

February 10, 1993

District 3

Courthouse

Nashville, NC

**Reasons for Proposed Actions:**

15A NCAC 10B .0203 - Changes the seasons and bag limits for white-tailed deer in particular counties.

15A NCAC 10B .0209 - To open or close the turkey season in certain counties.

15A NCAC 10B .0219 - To open a hunting season without restriction for coyote.

15A NCAC 10C .0205 - To include or exclude particular waters in the designations of hatchery supported trout water, wild trout water, catch and release water, and delayed harvest waters.

15A NCAC 10C .0208 - Changes the spawning area in which fishing is prohibited.

15A NCAC 10C .0305 - To change the seasons and/or creel limit of particular species of fish in particular bodies of water around the State.

15A NCAC 10D .0002 - Regulates the use of and activities on game lands.

15A NCAC 10D .0003 - Adds particular tracts of land to the game lands program, regulates activity on game lands, including hunting seasons.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from December 1, 1992 to February 10, 1993. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10B - HUNTING AND TRAPPING**

**SECTION .0200 - HUNTING**

**.0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule are closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

Beaufort	Duplin	Lenoir	Pitt
Bertie	Edgecombe	Martin	Richmond**
Bladen	Franklin	Nash	Robeson
Brunswick	Gates	New Hanover	Sampson
Camden	Greene	Northampton	Scotland
Carteret	Halifax	Onslow	Tyrrell

Chowan	Hertford	Pamlico	Vance
Columbus*	Hoke	Pasquotank	Warren
Craven	Hyde	Pender	Washington
Currituck	Jones	Perquimans	Wayne
Dare			Wilson

Cumberland: That part south of NC 24 or east of I-95.

Harnett: That part west of NC 87.

Johnston: All of the county except that part south of US 70 and west of I-95.

Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

Wake: That part north of I-40.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*See 15A NCAC 10D .0003(e)(2) for seasons on Sandhills Game Land.

- (B) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

Alexander	Davie	Lincoln	Wilkes
Alleghany	Forsyth	Stokes	Yadkin
Ashe	Gaston	Surry	
Catawba	Iredell	Watauga	

- (C) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

Avery	Clay	Jackson	Polk
Buncombe	Cleveland	Macon	Rutherford
Burke	Graham	Madison	Swain
Caldwell	Haywood	McDowell	Transylvania
Cherokee	Henderson	Mitchell	Yancey

- (D) Monday before Thanksgiving week to January 1 in the following counties and parts of counties:

Alamance	Davidson	Mecklenburg	Rockingham
Anson	Durham	Montgomery	Rowan
Cabarrus	Granville	Orange	Stanly
Caswell	Guilford	Person	Union
Chatham	Lee	Randolph	

Cumberland: That part north of NC 24 and west of I-95.

Harnett: That part east of NC 87.

Johnston: That part south of US 70 and west of I-95.

Moore: That part north of NC 211 and west of US 1.

Wake: That part south of I-40.

- (2) Deer of Either Sex. Deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph:
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the first Saturday in October to January 1 in those parts of Hyde, Tyrrell and Washington Counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Camden, Gates and Pasquotank Counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge and those parts of Anson and Richmond Counties known as Pee Dee National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 to January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and

marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.

(C) Second Saturday in October for youth either sex deer hunting by permit only on a designated portion of Beleys Creek Steam Station in Stokes County.

(D) The second Saturday in December in all of Buncombe, Catawba, Gaston, Haywood, Henderson, Lincoln, Madison, Mitchell, Polk, Transylvania, and Yancey Counties and the following parts of counties:

Avery: That part south of the Blue Ridge Parkway.

(E) Friday and Saturday of the week following Thanksgiving in all of Dare County and in the following parts of counties:

Cabarrus: That part west of US 52 and south of a line formed by NC 49 from the Mecklenburg County line to Mount Pleasant and east of SR 1006 from Mount Pleasant to the Rowan County line.

Davidson: That part north of I-85, except game lands.

Mecklenburg: That part north of US 74.

Rowan: That part west of US 52, except game lands.

Scotland: That part north of US 74, except game lands.

Union: That part south of US 74 and NC 75.

(F) Wednesday to Saturday of the week following Thanksgiving in all of Camden, Cumberland, Greene, Pasquotank, Tyrrell, ~~Wake~~, and Wilson Counties and in the following parts of counties:

Currituck: That part north and west of the Intracoastal Waterway.

Johnston: That part north of US 70 or west of I-95.

Moore: All of the county, except on game lands.

~~Nash: That part south of US 64.~~

Perquimans: That part south of US 17 and east of Perquimans River.

Richmond: That part east of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line, except on game lands.

Stanly: That part west of US 52.

~~Tyrrell: That part south of US 64.~~

Washington: That part east of NC 32 and south of US 64.

Wayne: That part north of US 70.

(G) Wednesday of the week following Thanksgiving to Saturday of next succeeding week in all of Alamance, Caswell, Chatham, Franklin, Guilford, Lee, Orange, Person, Randolph, Rockingham, ~~and Vance~~, and Wake Counties and in the following parts of counties:

~~Anson: All of the county except game lands.~~

Cabarrus: That part east of US 52.

Carteret: All of the county except game lands.

Chowan: That part north of US 17 and west of NC 32.

Columbus: That part west of US 74, SR 1005, and SR 1125.

Currituck: That part south and east of the Intracoastal Waterway, except the Outer Banks.

Davidson: That part south of I-85, except on game lands.

Durham: All of the county except Butner-Falls of Neuse Game Land.

~~Edgecombe: That part south of US 64.~~

Granville: All of the county except Butner-Falls of Neuse Game Land.

Johnston: That part south of US 70 and east of I-95.

Lenoir: That part west of NC 11.

Montgomery: All of the county except on game lands.

Nash: That part ~~north~~ south of US 64.

Richmond: That part west of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.

Robeson: That part east of I-95.

Rowan: That part east of US 52, except on game lands.

Stanly: That part east of US 52, except game lands.

Washington: That part west of NC 32 and south of US 64.

Wayne: That part south of US 70.

(H) Monday of Thanksgiving week to the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 280 and SR 3501.

(I) Wednesday of the week following Thanksgiving to January 1 in all of Brunswick, Edgecombe, Hertford, Gates, Northampton, Pitt, and Warren Counties, and in the following parts of counties:

Anson: All of the county except game lands.

Beaufort: All of the county except game lands.

Bertie: All of the county except Roanoke River Wetlands and Roanoke River National Wildlife Refuge.

Bladen: All of the county except game lands.

Chowan: That part south of US 17 or east of NC 32.

Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.

Craven: All of the county except game lands.

Duplin: All of the county except game lands.

~~Edgecombe: That part north of US 64.~~

Halifax: All of the county except Roanoke River Wetlands.

Hyde: All of the county except game lands.

Jones: All of the county except game lands.

Lenoir: That part east of NC 11.

Martin: All of the county except Roanoke River Wetlands.

Nash: That part north of US 64.

New Hanover: That part north of US 74.

Onslow: All of the county except game lands.

Pamlico: All of the county except game lands.

Pender: All of the county except game lands.

Perquimans: All of the county except that part that lies both south of US 17 and east of the Perquimans River.

Sampson: That part south of NC 24.

(J) The second Wednesday after Thanksgiving to the third Saturday after Thanksgiving in all of Alexander, Davie, Iredell, Rutherford, Stokes, Surry, and Wilkes Counties.

(K) The third Friday after Thanksgiving to the third Saturday after Thanksgiving in all of Alleghany, Ashe, Burke, Caldwell, Cleveland, Forsyth, McDowell, ~~Rutherford~~, Watauga, and Yadkin Counties.

(L) In those counties or parts of counties listed in Paragraph (b) (2) (I), except on game lands, one antlerless deer may be taken during that part of the regular gun season in which no other either sex season is open and must be tagged with the antlerless only deer tag.

(3) Game Lands Either-Sex Hunts. On the hunt dates indicated, deer of either sex may be taken by permittees engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003(e)(4) and (5).

(c) Open Seasons (Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

(A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land.

(B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.

(C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule.

(D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph



(b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms during the following seasons:

- (A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land.
- (B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms season in those counties or parts of counties listed in Parts (A) and (D) of Subparagraph (b) (1) of this Rule and deer of either sex may be taken on the last day of muzzle-loading firearms season in those counties or parts of counties listed in Part (B) and (C) of Subparagraph (b) (1) of this Rule.
- (B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) Bag Limits: Daily, two; possession, five; one of which must be antlerless; season, five; one of which must be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin.

(f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.*

**.0209 WILD TURKEY (BEARDED TURKEYS ONLY)**

(a) Open Season:

Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alleghany, Ashe, Caswell, Cherokee, Clay, Durham, Graham, Granville, Haywood, Henderson, Hyde, Jackson, Macon, Orange, Person, Polk, Rockingham, ~~\*\*Scotland~~, Swain, Transylvania, Watauga, and in the following portions of counties:

Alamance: All of the county except that part south of I-85 and west of NC 87.

Anson: That part east of US 52 and north of US 74 and that part east of NC 145 and south of US 74.

~~\*\*Bertie:~~ That part west of a line formed by NC 45 from the Hertford County line to Colerain, NC 42 to Powellsville, US 13 to US 17 South, US 17 South to SR 1500, SR 1500 to NC 308, and NC 308 to the Washington County line.

~~\*\*Bladen:~~ That part south of ~~NC US 701~~ US 701 and east of ~~a line formed by NC 210, NC 53, NC 87 or SR 1730.~~

Brunswick: That part north of US 74-76 or east of NC 133.

Buncombe: All of the county except that part north and east of a boundary formed by US 19/23, I-240, and I-40.

Burke: That part north of I-40 and west of NC 18 and NC 181.

Carteret: That part west of US 70 and north of NC 24.

Chatham: That part north of US 64.

~~Chowan: That part south of US 17.~~

Columbus: That part south of US 74 and west of NC 410 and that part north of NC 87.

Craven: That part west of US 70, and south of SR 1101 and that part north of the Neuse River, south of a line formed by US 17 and US 17 Business, and east of a line formed by SR 1440 and SR 1441.

\*\*Halifax: That part north of NC 903 and east of I-95.

Hertford: That part east of US 13.

Hoke: That part south and west of NC 211.

Jackson: ~~That part south of US 74 except the portion bounded on the north by NC 281, on the west by NC 107, and on the south by US 64.~~

Johnston: That part south of US 70 and I-95 and east of US 701.

Madison: All of the county except that part east of SR 1434 and NC 212, north of SR 1318, US 23 and SR 1503.

\*\*Martin: That part north of a boundary formed by US 64 from the Washington County line to Williamston, north of NC 125 from Williamston to the junction with NC 142, and north of NC 142 to the Edgecombe County line.

McDowell: That part north of US 70 and that part south of I-40.

Mitchell: That part north and west of a boundary formed by NC 197, NC 226, and NC 261.

Montgomery: All of the county except that part north of NC 24/27 and east of NC 134.

\*\*Moore: That part south of NC 211.

Northampton: That part south of a boundary formed by US 158 from the Halifax County line to Jackson, NC 305 from Jackson to Rich Square, US 258 from Rich Square to NC 308, and NC 308 to the Bertie County line.

Onslow: All of the county except that part east of a line formed by US 17, SR 1434 and SR 1442.

Pender: That part west of US 421.

~~Perquimans: That part south of US 17.~~

\*\*Richmond: That All of the county except that part north south of US 74 and east of US 1.

Robeson: That part east of I-95 and south of US 74.

Rutherford: That part west of US 221.

Surry: That part west of I-77.

~~Watauga: That part north and east of US 321.~~

Wilkes: That part north of NC 268.

Yancey: That part north of US ~~19E 19W~~ and ~~east and north of US 19W~~ SR 1417.

\*\* The Sandhills Game Land in Richmond, Scotland, and Moore Counties, the Bladen Lakes State Forest Game Lands in Bladen County, and the Roanoke River Wetlands in Bertie, Halifax, and Martin Counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting. Such permits are issued by authorized representatives of the Wildlife Resources Commission.

(b) Bag Limits: Daily, one; possession, two; season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The carcass of each wild turkey shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.*

## **.0219 COYOTE**

(a) No closed season.

(b) Bag Limits: No restriction.

*Statutory Authority G.S. 113-134; 113-291.2.*

## **SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

### **SECTION .0200 - GENERAL REGULATIONS**

## **.0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain

waters are designated as public mountain trout waters and classified as wild trout waters or hatchery supported waters. For specific classifications see Subparagraphs (1) and (2) of Paragraph (a) of this Rule. Other streams, portions of streams, and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as hatchery supported trout waters or wild trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The hatchery supported public mountain trout waters are designated in this Subparagraph under the counties where located. Where specific watercourses are listed indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire watercourse or impoundment named, including tributaries when on game lands, except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Little Pine Creek

Big Pine Creek

Little Glade Creek

Laurel Branch

Big Glade Creek

Bledsoe Creek

Pine Swamp Creek

Waterfalls Creek (South Fork Little River)(except where posted against trespass)

South Fork New River (not trout water)

Prather Creek

Cranberry Creek

Piney Fork

Meadow Fork

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

~~Stone Mountain Creek~~

(B) Ashe County:

New River (not trout waters)

North Fork New River (Watauga Co. line to Sharp Dam)

Helton Creek (Virginia State line to New River)

Big Horse Creek (SR 1361 bridge to Tuckerdale)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek

Three Top Creek (portion not on game lands)

Hoskins Fork (Watauga County line to North Fork New River)

South Fork New River (not trout waters)

Cranberry Creek (Alleghany County line to South Fork New River)

Nathans Creek

Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Trout Lake

Roan Creek

North Beaver Creek

South Beaver Creek (headwaters to Ashe Lake)

Pine Swamp Creek (all forks)

Old Fields Creek

Call Creek (West Prong Old Fields Creek)

Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River (headwaters to Mitchell County line, except where posted against trespass)

Plumtree Creek

Roaring Creek

Squirrel Creek

Elk River (SR 1306 crossing to Tennessee State line)

Elk River (Lees-McRae College boundary line to NC 194 bridge at Heaton, except where posted against trespass)

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]

Gragg Prong

Webb Prong

Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Boyde Coffey Lake

Archie Coffey Lake

Linville River (Sloop Dam to Blue Ridge Parkway boundary line)

Milltimber Creek

Linville River [Land Harbor line (below dam) to Ben Aldridge line, except Bob Miller property]

(D) Buncombe County:

French Broad River (not trout water)

Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)

Dillingham Creek (Corner Rock Creek to Big Ivy Creek)

Stony Creek

Mineral Creek

Corner Rock Creek

Reems Creek (Woodfin Watershed dam to US 19-23 bridge, except where posted against trespass)

Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)

Bent Creek

Lake Powhatan

Cane Creek (headwaters to SR 3138 bridge)

(E) Burke County:

Catawba River (not trout water)

South Fork Catawba River (not trout water)

Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)

Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.

Johns River (not trout water)

Parks Creek (not trout water)

Carroll Creek (game lands above SR 1405)

Linville River (game lands portion below the Blue Ridge Parkway and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)

(F) Caldwell County:

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)

Estes Mill Creek (not trout water)

Thorpe Creek (falls to NC 90 bridge)

Mulberry Creek (not trout water)

Boone Fork (not Hatchery Supported trout water)

Boone Fork Pond

(G) Cherokee County:

Hiwassee River (not trout water)

Shuler Creek (headwaters to Tennessee line, except where posted against trespass)

North Shoal Creek (Crane Creek) (headwaters to SR 1325)

Persimmon Creek

Davis Creek

Bald Creek

Beaver Dam Creek (headwaters to SR 1326 bridge)

Valley River

Hyatt Creek

Webb Creek

Junaluska Creek (bridge at U.S. Forest Service road 440, Section No. 4, to Valley River)

(H) Clay County:

Hiwassee River (not trout water)

Fires Creek (bear sanctuary line to SR 1300)

Tusquitee Creek (headwaters to lower SR 1300 bridge)

Tuni Creek

Chatuge Lake (not trout water)

Shooting Creek (headwaters to US 64 bridge at SR 1338)

Hothouse Branch

Vineyard Creek

(I) Graham County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah River (not trout water)

Yellow Creek

West Buffalo Creek

Santeelah Reservoir (not trout water)

Santeelah Creek (Johns Branch to mouth)

Huffman Creek (Little Buffalo Creek)

Squalla Creek

South Fork Squalla Creek

Big Snowbird Creek (old railroad junction to mouth)

Mountain Creek (game lands boundary to SR 1138 bridge)

Long Creek (portion not on game lands)

Tulula Creek (headwaters to lower bridge on SR 1211)

Franks Creek

Cheoah Reservoir

Fontana Reservoir (not trout water)

Stecoah Creek

Sawyer Creek

Panther Creek

(J) Haywood County:

Pigeon River (not trout water)

Hurricane Creek

Cold Springs Creek

Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)

Jonathans Creek - upper [SR 1307 bridge (west) to SR 1302 bridge]

Hemphill Creek

West Fork Pigeon River (headwaters to Champion International property line)

(K) Henderson County:

Broad River (not trout water)

Rocky Broad River (one-half mile north of Bat Cave to Rutherford County line)

Green River - upper (mouth of Bob Creek to mouth of Rock Creek)

Green River - lower (Lake Summit Dam to Polk County line)

Camp Creek (SR 1919 to Polk County line)

Big Hungry River

Little Hungry River

North Fork Mills River

(L) Jackson County:

Tuckasegee River (confluence with West Fork Tuckasegee River to bridge at Wilmot)

Scott Creek (entire stream, except where posted against trespass)

Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)

North Fork Scott Creek

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River, except portion posted for Western Carolina University outdoor classroom)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Wolf Creek Lake

Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)

Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.

Queens Creek Lake

Roaring Fork Creek (game land boundary to mouth)

Burningtown Creek

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672)

Ellijay Creek (except where posted against trespass)

Skitty Creek (not trout water)

Cliffside Lake

Cartoogechaye Creek (US 64 bridge to Little Tennessee River)

Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)

Savannah River (not trout water)

Big Creek (base of falls to Georgia State line)

(N) Madison County:

French Broad River (not trout water)

Shut-In Creek

Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line)

Meadow Fork Creek

Roaring Fork

Little Creek

Max Patch Pond

Mill Ridge Pond

Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)

Shelton Laurel Creek (headwaters to NC 208 bridge)

Big Creek (headwaters to lower game land boundary)

Mill Creek

Spillcorn Creek

Puncheon Fork (Hampton Creek to Big Laurel Creek)

(O) McDowell County:

Catawba River (not trout water)

Buck Creek (not trout water)

Little Buck Creek (game land portion)

Curtis Creek (fish barrier to US 70 bridge)

~~Newberry Creek (game land portion)~~

North Fork Catawba River (headwaters to North Cove School, SR 1569)

Armstrong Creek (Cato Holler line downstream to upper Greenlee line)

Mill Creek (upper railroad bridge to Old Fort Dam, except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)

Big Rock Creek (headwaters to fishing club property above A.D. Harrel farm)

Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)

Cane Creek (SR 1219 to Nolichucky River)

Grassy Creek (East Fork Grassy Creek to mouth)

East Fork Grassy Creek

North Toe River (Avery County line to SR 1121, Altapass Road)

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Pacolet Falls to NC 108 bridge)

Fork Creek (Fork Creek Church on SR 1128 to North Pacolet River)

Big Fall Creek (portion above and below water supply reservoir)

Green River (Henderson County line to mouth of Brights Creek)

Little Cove Creek

Cove Creek

Camp Creek [Henderson County line (top of falls) to Green River]

Fulloms Creek (SR 1154 to Green River)

(R) Rutherford County:

Broad River (not trout water)

Rocky Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)

(S) Stokes County:

Dan River (lower Flippin property line below SR 1416 to 200 yards downstream from end of SR 1421)

(T) Surry County:

Yadkin River (not trout water)

Ararat River (SR 1727 downstream to SR 1759) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

Stewarts Creek (not trout water)

Pauls Creek (Virginia State line to SR 1625)

Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)

Little Fisher River (Virginia State line to NC 89 bridge)

Merritt Creek

(U) Swain County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah Reservoir

- Tuckasegee River (not trout water)
  - Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
- Oconaluftee River (not trout water)
  - Connelly Creek
- Alarka Creek
- Nantahala River (Macon County line to existing Fontana Lake water level)
- (V) Transylvania County:
  - French Broad River (junction of west and north forks to US 276 bridge)
    - Davidson River (Avery Creek to Ecusta intake)
    - East Fork French Broad River (Glady Branch to French Broad River)
    - Middle Fork French Broad River
    - West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks)
  - Savannah River (not trout water)
    - Horsepasture River (Jackson County line to existing Lake Jocassee water level)
    - Thompson River (SR 1152 to South Carolina state line, except where posted against trespass)
- (W) Watauga County:
  - New River (not trout waters)
    - North Fork New River (headwaters to Ashe County line)
    - South Fork New River (not trout water)
      - Meat Camp Creek
      - Norris Fork Creek
    - Howards Creek (downstream from lower falls)
  - Middle Fork New River (Lake Chetola Dam to South Fork New River)
- Yadkin River (not trout water)
  - Stony Fork (headwaters to Wilkes County line)
  - Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
- Watauga River (SR 1559 to SR 1114 bridge)
  - Beech Creek
    - Buckeye Creek Reservoir
    - Coffee Lake
  - Laurel Creek
  - Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
  - Dutch Creek (second bridge on SR 1134 to mouth)
    - Crab Orchard Creek
  - Boone Fork (headwaters to SR 1562)
- (X) Wilkes County:
  - Yadkin River (not trout water)
    - Roaring River (not trout water)
      - East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) (Delayed harvest regulations apply to portion on Stone Mountain State Park) See Subparagraph (5) of Paragraph (a) of this Rule.
      - Stone Mountain Creek (~~Alleghany County line to Bullhead Creek~~) [Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.]
    - Middle Prong Roaring River (headwaters to second bridge on SR 1736)
      - Harris Creek (end of SR 1716 to mouth)
      - Pell Branch Pond
      - Boundary Line Pond
    - West Prong Roaring River (not trout waters)
      - Pike Creek
        - Pike Creek Pond
    - Reddies River (not trout water)
      - Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
        - South Fork Reddies River (headwaters to NC 16 bridge)
        - North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on



SR 1559)

North Prong Reddies River (Darnell Creek) (downstream ford on SR 1569 to confluence with North Fork)

Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)

Fall Creek (except portions posted against trespass)

Stony Fork Creek (headwaters to Mt. Zion bridge near intersection of SR 1155 and SR 1167)

(Y) Yancey County:

Nolichucky River (not trout water)

Cane River (Cattail Creek to Bowlens Creek)

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)

South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

- (2) Wild Trout Waters. All designated public mountain trout waters located on game lands are classified as wild trout waters unless classified otherwise. The trout waters listed in this Subparagraph are also classified as wild trout waters. On game lands all tributaries to wild trout waters are also classified as wild trout waters.

(A) Alleghany County:

Ramey Creek (entire stream)

Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:

Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.

(C) Avery County:

Birchfield Creek (entire stream)

Cow Camp Creek (entire stream)

Cranberry Creek (entire stream)

Horse Creek (entire stream)

Jones Creek (entire stream)

Kentucky Creek (entire stream)

North Harper Creek (entire stream)

Rockhouse Creek (entire stream)

South Harper Creek (entire stream)

Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)

(D) Buncombe County:

Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.

(E) Burke County:

All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinny Creek and the lower park boundary where delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

(F) Caldwell County:

Buffalo Creek (headwaters to lower Dahl property line)

Joe Fork (Watauga County line to falls)

Rockhouse Creek (entire stream)

(G) Jackson County:

Gage Creek (entire stream)

Tanasee Creek (entire stream)

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)

(H) Mitchell County:

Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)

Little Rock Creek (headwaters to Green Creek Bridge, except where posted against trespass)

Wiles Creek (game land boundary to mouth)

(I) Transylvania County:

South Fork Mills River (entire stream)

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

(J) Watauga County:

Watauga River (Avery County line to SR 1559)

Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Howards Creek (headwaters to lower falls)

Dutch Creek (headwaters to second bridge on SR 1134)

(K) Wilkes County:

Big Sandy Creek (portion on Stone Mountain State Park)

Garden Creek (portion on Stone Mountain State Park)

Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Widow Creek (portion on Stone Mountain State Park)

(L) Yancey County:

Lickskillet Creek (entire stream)

Middle Creek (game land boundary to mouth)

Rock Creek (game land boundary to mouth)

South Toe River (game land boundary downstream to Clear Creek)

- (3) Catch and Release/Artificial Lures Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Harris Creek and tributaries (portions on Stone Mountain State Park, Wilkes County)

Big Horse Creek, excluding tributaries (Virginia state line to SR 1361 bridge, Ashe County)

Three Top Creek (portion located on Bluff Mountain Game Lands, Ashe County)

Wilson Creek (game lands portion, including tributaries, Avery County)

Upper Creek, Yancey County

Lower Creek, Yancey County

Tuckasegee River including all tributaries above the Clarke property, Jackson County

Flat Creek, Jackson County

Carter Creek (game lands portion), Buncombe County

Newberry Creek (game land portion, McDowell County)

- (4) Catch and Release/Artificial Flies Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River, Watauga County)

South Toe River (portion from the concrete bridge above Black Mountain Campground downstream to the game land boundary, excluding Camp Creek and Neals Creek, Yancey County)

Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek, Avery County)

Davidson River (headwaters to Avery Creek excluding Avery Creek, Looking Glass Creek, and Grogan Creek, Transylvania County)

- (5) Delayed Harvest. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 March and the Friday before the first Saturday in June, inclusive, only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. On the first Saturday in June these streams revert to Hatchery Supported Waters regulations:

Ararat River (SR 1727 downstream to SR 1759, Surry County)

East Prong Roaring River (from Bullhead Creek downstream to the lower Stone Mountain State Park boundary, Wilkes County)

Stone Mountain Creek (from falls at Alleghany County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park, Wilkes County)

Jacob Fork (Shinny Creek to lower South Mountain State Park boundary, Burke County)

Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal, Swain County)

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3) and (4) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
  - (A) Open Season. There is a year round open season for the licensed taking of trout.
  - (B) Creel Limit. The daily creel limit is four trout.
  - (C) Size Limit. The minimum size limit is seven inches.
  - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess live or preserved bait while fishing wild trout waters.
  - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

**.0208 SPAWNING AREAS**

The following waters are designated as spawning areas in which fishing is prohibited or restricted as indicated:

- (1) No person shall fish by any method or at any time in, or within 50 feet of, the fish ladder at Quaker Neck Dam on Neuse River in Wayne County.
- (2) No person shall fish by any method from February 15 to April 15, both inclusive, in Linville River from the NC 126 bridge downstream to the ~~backwater of Lake James in Burke County~~ lower spawning area boundary.
- (3) No person shall fish by netting in that portion of the Dan River lying within the State downstream from the Brantly Steam Plant at Danville, or in the Roanoke River between the US 258 bridge and the dam of Roanoke Rapids Lake, or while in or on said rivers within said areas, have in possession any bow net, dip net or any landing net having a handle exceeding eight feet in length or a hoop or frame to which the net is attached exceeding 60 inches along its outside perimeter.

*Statutory Authority G.S. 113-134; 113-292.*

**SECTION .0300 - GAME FISH**

**.0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout	4	7 in.	ALL YEAR
Waters	(exc. 15)	(exc. 2)	

**PROPOSED RULES**

Hatchery Supported Trout Waters and undesignated waters	7	None	All year, except March 1 to 7:00 a.m. on first Saturday in April (excs. 2 & 3)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 9 & 10)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth	5 (exc. 10)	14 in. (excs. 4, 8 & 11)	ALL YEAR (exc. 13)
Smallmouth and Spotted	5 (exc. 10)	12 in. (excs. 4, 8 & 11)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	None	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	5	18 in.	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 6)	16 in. (excs. 1, 6 & 12)	ALL YEAR (excs. 6, 16, & 18)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 5 & 14)	None (exc. 14)	ALL YEAR (exc. 5)
NONGAME FISHES	None (exc. 17)	None (exc. 17)	ALL YEAR (exc. 7)

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters

- of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Under an agreement with Tennessee, the minimum size limit on trout in Calderwood Reservoir is seven inches.
- (4) Bass taken from ~~streams designated as public mountain trout waters or from~~ Calderwood Reservoir may be retained without restriction as to size limit.
- (5) On Mattamuskeet Lake, special federal regulations apply.
- (6) In the inland fishing waters of Cape Fear, Neuse, Pee-Dee, Pungo and Tar-Pamlico ~~Rivers~~ rivers and their tributaries extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is ~~one~~ three fish and the minimum length limit is 18 inches. In the Roanoke River up to the first impoundment, from July 1 through March 31 and June 1 through June 30 the daily creel limit for striped bass is one fish and the minimum length limit is 18 inches; from April 1 to May 31 the daily creel limit is three fish, no fish between the lengths of 22 inches and 27 inches may be retained, and the minimum length limit is ~~16~~ 18 inches, except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (11) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County; and
  - (B) Lake Thom-A-Lex in Davidson County.
- (12) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (13) In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.
- (14) In Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, and Tuckertown Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (15) In Slick Rock Creek the minimum size is 7 inches for brook trout and 10 inches for brown and rainbow trout.
- (16) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (17) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- (18) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

## SUBCHAPTER 10D - GAME LANDS REGULATIONS

### .0002 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose, except as authorized by permit from the Executive Director of the Wildlife Resources Commission or by authorized personnel in the performance of their duties, is prohibited.
- (4) Establishment of Archery and Restricted Zones. The Commission will conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments will be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License

(1) Hunting and Trapping

(A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.

- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
- (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

- (2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of fifty dollars (\$50.00) for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed between April 1 and August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;

(7) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed and maintained for vehicular travel and those trails posted for vehicular travel; provided that this provision shall not apply to participants in scheduled bird dog field trials held on the Sandhills Game Land.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

*Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.*

### .0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates:

(1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Buncombe County--Browntown Farms Game Land

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

Wayne County--Cherry Farm Game Land

(2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:



Ashe County--Carson Woods Game Land

~~Bertie County--Bertie County Game Lands~~

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving. Wild turkey hunting is by permit only.)

Caswell County--Caswell Game Land

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only.

Robeson County--Robeson Game Land

Robeson County--Bullard and Branch Hunting Preserve Game Land

Sampson County--Sampson Game Lands

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

(3) Any game may be taken on the following game lands during the open season, except that:

- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
  - (i) Except for the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
  - (ii) In the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (D) On Croatan, ~~Goose Creek, New Hope Jordan,~~ and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons, ~~except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service; On After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on those opening and closing days of the waterfowl season as well as on~~

~~those of the duck seasons, Saturdays that fall after November 1 of the season of the duck seasons,~~  
and on Thanksgiving and New Year's day;

- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Anson, New Lake, Pungo River, and Gull Rock Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.
- (H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (I) On Angola Bay, Butner-Falls of Neuse, Croatan, Goose Creek, and Hofmann Forest Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (J) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;
- (K) On the posted waterfowl impoundments on the ~~New Hope~~ Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (L) Additional restrictions or modifications apply as indicated in parentheses following specific designations:

Alexander and Caldwell Counties--Brushy Mountains Game Lands

Anson County--Anson Game Land

Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands

Ashe County--Elk Ridge Game Lands

Ashe County--Cherokee Game Lands

Ashe and Watauga Counties--Elk Knob Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land

Brunswick County--Green Swamp Game Land

Burke and Cleveland Counties--South Mountains Game Lands

Caldwell, Watauga and Wilkes Counties--Yadkin Game Land

Carteret, Craven and Jones Counties--Croatan Game Lands

Chatham County--Chatham Game Land

Chatham, Durham, Orange, and Wake Counties--~~New Hope~~ Jordan Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, including all equine species, is prohibited.)

Chatham and Wake Counties--Shearon Harris Game Land

Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.

Chowan County--Chowan Game Land

Cleveland County--Gardner-Webb Game Land

Craven County--Neuse River Game Land  
 Currituck County--North River Game Land  
 Currituck County--Northwest River Marsh Game Land  
 Dare County--Dare Game Land (No hunting on posted parts of bombing range.)  
 Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land  
 Davidson County--Linwood Game Land  
 Davidson, Montgomery and Randolph Counties--Uwharrie Game Land  
 Duplin and Pender Counties--Angola Bay Game Land  
 Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. Horseback riding, including all equine species, is prohibited.)

~~Franklin County--Franklin Game Lands~~

Gates County--Chowan Swamp Game Land  
 Henderson, Polk and Rutherford Counties--Green River Game Lands  
 Hyde County--Gull Rock Game Land  
 Hyde County--Pungo River Game Land  
 Hyde and Tyrrell Counties--New Lake Game Land  
 Jones and Onslow Counties--Hofmann Forest Game Land  
 Lee County--Lee Game Land  
~~McDowell County--Hickory Nut Mountain Game Land~~  
 McDowell and Rutherford Counties--Dysartsville Game Lands  
 Moore County--Moore Game Land  
 New Hanover County--Sutton Lake Game Land  
 Person County--Person Game Land  
 Transylvania County--Toxaway Game Land  
 Tyrrell ~~County~~ and Washington Counties--Lantern Acres Game Land  
 Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)

Wilkes County--Thurmond Chatham Game Land

- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:

Friday and Saturday of the first week after Thanksgiving Week:

Uwharrie and Alcoa southeast of NC 49

Thursday and Friday of the week before Thanksgiving Week:

Sandhills east of US 1

Sandhills west of US 1

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of ~~October~~ September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees ~~30 days~~ prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) The following game lands and Federal Wildlife Refuge are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin Counties--Roanoke River Wetlands;

Bertie County--Roanoke River National Wildlife Refuge.

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

*Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10C .0206 and .0401 - .0402.*

*The proposed effective date of this action is July 1, 1993.*

*The public hearing will be conducted at 7:00 p.m. on February 3, 1993 at the Bladen County Courthouse, Elizabethtown, NC 28337.*

***Reason for Proposed Actions:***

*15A NCAC 10C .0206 and .0401: To allow the use of trotlines and sethooks in Lake Waccamaw.*

*15A NCAC 10C .0402: To allow the use of seines in Lake Waccamaw.*

***Comment Procedures:*** *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from December 1, 1992 to February 3, 1993. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

**SECTION .0200 - GENERAL REGULATIONS**

**.0206 TROTLINES AND SET-HOOKS**

Trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used; except that no trotlines or set-hooks may be set in designated public mountain trout waters, ~~Lake Waccamaw,~~ or in any of the impounded waters on the Sandhills Game Land. For the purposes of this Regulation, a set-hook is defined as any hook and line which is attached at one end only to a stationary or floating object and which is not under immediate control and attendance of the person using such device. Each trotline shall have attached the name and address of the user legibly and indelibly inscribed. Each trotline shall be conspicuously marked at each end with a flag, float, or other prominent object so that its location is readily discernable by boat operators and swimmers. Trotlines must be set parallel to the nearest shore in ponds, lakes, and reservoirs. All trotlines and throwlines must be fished at least once daily and all fish removed at that time. Untended trotlines, as evidenced by the absence of bait, may be removed from the water by wildlife enforcement officers when located in areas of multiple water use.

Recognizing the safety hazards to swimmers, boaters and water skiers which are created by floating metal cans and glass jugs, it is unlawful to use metal cans or glass jugs as floats. This shall not be construed to prohibit the use of plastic jugs, cork, styrofoam, or similar materials as floats.

*Statutory Authority: G.S. 113-134; 113-272; 113-292.*

**SECTION .0400 - NONGAME FISH**

**.0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE**

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line, rod and reel, trotline or set-hook. Nongame fishes may be taken by such hook and line methods at any time without restriction as to

size limits or creel limits, except that no trotlines or set-hooks may be used ~~in Lake Waccamaw~~, in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(b) Nongame fishes taken by hook and line methods or by licensed special devices may be sold.

(c) Freshwater mussels may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County.

(d) In the Urban Lakes listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate and the minimum length limit is 12 inches:

- Oka T. Hester Pond, Guilford County
- Lake Luke Marion, Moore County
- Lake Crabtree, Wake County
- Shelley Lake, Wake County
- Freedom Park Pond, Mecklenburg County
- Hornet's Nest Ponds, Mecklenburg County
- Campus Hills Pond, Durham County
- Twin Lake Ponds, Durham County
- Rocky Mount City Lake, Nash County

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

#### **.0402 TAKING BAIT FISHES AND FISH BAIT**

(a) It is unlawful to take bait fishes in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this subsection.

(c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water. No person shall take more than 200 bait fish from inland fishing waters during one day. It is unlawful to take bait fishes or fish bait from designated public mountain trout waters and:

- (1) Chatham County:
  - Deep River
  - Rocky River
  - Bear Creek
- (2) Lee County:
  - Deep River
- (3) Moore County:
  - Deep River
- (4) Randolph County:
  - Deep River below the Coleridge Dam
  - Fork Creek.

*Statutory Authority G.S. 113-134; 113-135; 113-272; 113-272.3; 113-292.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10C .0205, .0208, .0302, .0305, .0404, .0503; 10D .0004.*

*The proposed effective date of this action is July 1, 1993.*

*The public hearing will be conducted at 10:00 a.m. on January 20, 1993 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

***Reason for Proposed Actions:***

*15A NCAC 10C .0205 - To include or exclude particular waters in the designations of hatchery supported trout waters, catch and release trout waters and wild trout waters.*

*15A NCAC 10C .0208 - Removes the spawning area designation of a particular area of water.*

*15A NCAC 10C .0302 - Restricts the taking of inland game fishes to hook and line or rod and handline.*

*15A NCAC 10C .0305 - To open the large mouth bass season in Cane Creek Reservoir.*

*15A NCAC 10C .0404 - To place restrictions on the use of bows in fishing.*

*15A NCAC 10C .0503 - To correct the spelling of a creek.*

*15A NCAC 10D .0004 - To change the name of a game land.*

***Comment Procedures:*** *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from December 1, 1992 to January 20, 1993. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10C - INLAND FISHING REGULATIONS

#### SECTION .0200 - GENERAL REGULATIONS

##### **.0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain waters are designated as public mountain trout waters and classified as wild trout waters or hatchery supported waters. For specific classifications see Subparagraphs (1) and (2) of Paragraph (a) of this Rule. Other streams, portions of streams, and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as hatchery supported trout waters or wild trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The hatchery supported public mountain trout waters are designated in this Subparagraph under the counties where located. Where specific watercourses are listed indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire watercourse or impoundment named, including tributaries when on game lands, except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Little Pine Creek  
Big Pine Creek  
Little Glade Creek  
Laurel Branch  
Big Glade Creek  
Bledsoe Creek  
Pine Swamp Creek  
Waterfalls Creek (South Fork Little River)(except where posted against trespass)  
South Fork New River (not trout water)  
Prather Creek  
Cranberry Creek  
Piney Fork  
Meadow Fork  
Yadkin River (not trout water)  
Roaring River (not trout water)  
East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest  
Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.  
Stone Mountain Creek

(B) Ashe County:

New River (not trout waters)  
North Fork New River (Watauga Co. line to Sharp Dam)  
Helton Creek (Virginia State line to New River)  
Big Horse Creek (SR 1361 bridge to Tuckerdale)  
Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)  
Big Laurel Creek  
Three Top Creek (portion not on game lands)  
Hoskins Fork (Watauga County line to North Fork New River)  
South Fork New River (not trout waters)  
Cranberry Creek (Alleghany County line to South Fork New River)  
Nathans Creek  
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)  
Trout Lake  
Roan Creek  
North Beaver Creek  
South Beaver Creek (headwaters to Ashe Lake)  
Pine Swamp Creek (all forks)  
Old Fields Creek  
Call Creek (West Prong Old Fields Creek)  
Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)  
North Toe River (headwaters to Mitchell County line, except where posted against trespass)  
Plumtree Creek  
Roaring Creek  
Squirrel Creek  
Elk River (SR 1306 crossing to Tennessee State line)  
Elk River (Lees-McRae College boundary line to NC 194 bridge at Heaton, except where posted against trespass)  
Catawba River (not trout water)  
Johns River (not trout water)  
Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]  
Gragg Prong

- Webb Prong
- Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
- Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]
- Boyde Coffey Lake
- Archie Coffey Lake
- Linville River (Sloop Dam to Blue Ridge Parkway boundary line)
- Milltimber Creek
- Linville River [Land Harbor line (below dam) to Ben Aldridge line, except Bob Miller property]
- (D) Buncombe County:
  - French Broad River (not trout water)
  - Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
  - Dillingham Creek (Corner Rock Creek to Big Ivy Creek)
  - Stony Creek
  - Mineral Creek
  - Corner Rock Creek
  - Reems Creek (Woodfin Watershed dam to US 19-23 bridge, except where posted against trespass)
  - Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)
  - Bent Creek
  - Lake Powhatan
  - Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
  - Catawba River (not trout water)
  - South Fork Catawba River (not trout water)
  - Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)
  - Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.
  - Johns River (not trout water)
  - Parks Creek (not trout water)
  - Carroll Creek (game lands above SR 1405)
  - Linville River (first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:
  - Catawba River (not trout water)
  - Johns River (not trout water)
  - Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)
  - Estes Mill Creek (not trout water)
  - Thorpe Creek (falls to NC 90 bridge)
  - Mulberry Creek (not trout water)
  - Boone Fork (not Hatchery Supported trout water)
  - Boone Fork Pond
- (G) Cherokee County:
  - Hiwassee River (not trout water)
  - Shuler Creek (headwaters to Tennessee line, except where posted against trespass)
  - North Shoal Creek (Crane Creek) (headwaters to SR 1325)
  - Persimmon Creek
  - Davis Creek
  - Bald Creek
  - Beaver Dam Creek (headwaters to SR 1326 bridge)
  - Valley River
  - Hyatt Creek
  - Webb Creek



- Junaluska Creek (bridge at U.S. Forest Service road 440, Section No. 4, to Valley River)
- (H) Clay County:
- Hiwassee River (not trout water)
  - Fires Creek (bear sanctuary line to SR 1300)
  - Tusquitee Creek (headwaters to lower SR 1300 bridge)
  - Tuni Creek
  - Chatuge Lake (not trout water)
  - Shooting Creek (headwaters to US 64 bridge at SR 1338)
  - Hothouse Branch
  - Vineyard Creek
- (I) Graham County:
- Little Tennessee River (not trout water)
  - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
  - Cheoah River (not trout water)
  - Yellow Creek
  - West Buffalo Creek
  - Santeelah Reservoir (not trout water)
  - Santeelah Creek (Johns Branch to mouth)
  - Huffman Creek (Little Buffalo Creek)
  - Squalla Creek
  - South Fork Squalla Creek
  - Big Snowbird Creek (old railroad junction to mouth)
  - Mountain Creek (game lands boundary to SR 1138 bridge)
  - Long Creek (portion not on game lands)
  - Tulula Creek (headwaters to lower bridge on SR 1211)
  - Franks Creek
  - Cheoah Reservoir
  - Fontana Reservoir (not trout water)
  - Stecoah Creek
  - Sawyer Creek
  - Panther Creek
- (J) Haywood County:
- Pigeon River (not trout water)
  - Hurricane Creek
  - Cold Springs Creek
  - Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
  - Jonathans Creek - upper [SR 1307 bridge (west) to SR 1302 bridge]
  - Hemphill Creek
  - West Fork Pigion River (headwaters to Champion International property line, except Middle Prong)
- (K) Henderson County:
- Broad River (not trout water)
  - Rocky Broad River (one-half mile north of Bat Cave to Rutherford County line)
  - Green River - upper (mouth of Bob Creek to mouth of Rock Creek)
  - Green River - lower (Lake Summit Dam to Polk County line)
  - Camp Creek (SR 1919 to Polk County line)
  - Big Hungry River
  - Little Hungry River
  - North Fork Mills River (game lands portion below the Hendersonville watershed dam)
- (L) Jackson County:
- Tuckasegee River (confluence with West Fork Tuckasegee River to bridge at Wilmot)
  - Scott Creek (entire stream, except where posted against trespass)
  - Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)
  - North Fork Scott Creek
  - Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)  
Cullowhee Creek (Tilley Creek to Tuckasegee River, except portion posted for Western Carolina University outdoor classroom)  
Bear Creek Lake  
Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
Wolf Creek Lake  
Balsam Lake  
Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]  
Tanasee Creek Lake  
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)  
Shoal Creek (Glenville Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)  
Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.  
Queens Creek Lake  
Roaring Fork Creek (game land boundary to mouth)  
Burningtown Creek  
Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672)  
Ellijay Creek (except where posted against trespass)  
Skitty Creek (not trout water)  
Cliffside Lake  
Cartoogechaye Creek (US 64 bridge to Little Tennessee River)  
Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)  
Savannah River (not trout water)  
Big Creek (base of falls to Georgia State line)

(N) Madison County:

French Broad River (not trout water)  
Shut-In Creek  
Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line)  
Meadow Fork Creek  
Roaring Fork  
Little Creek  
Max Patch Pond  
Mill Ridge Pond  
Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)  
Shelton Laurel Creek (headwaters to NC 208 bridge)  
Big Creek (headwaters to lower game land boundary)  
Mill Creek  
Spillcorn Creek  
Puncheon Fork (Hampton Creek to Big Laurel Creek)

(O) McDowell County:

Catawba River (not trout water)  
Buck Creek (not trout water)  
Little Buck Creek (game land portion)  
Curtis Creek (fish barrier to US 70 bridge)  
Newberry Creek (game land portion)  
North Fork Catawba River (headwaters to North Cove School, SR 1569)  
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)  
Mill Creek (upper railroad bridge to ~~Old Fort Dam~~ U.S. 70 Bridge, except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)

Big Rock Creek (headwaters to fishing club property above A.D. Harrel farm)

Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)

Cane Creek (SR 1219 to Nolichucky River)

Grassy Creek (East Fork Grassy Creek to mouth)

East Fork Grassy Creek

North Toe River (Avery County line to SR 1121, Altapass Road)

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Pacolet Falls to NC 108 bridge)

Fork Creek (Fork Creek Church on SR 1128 to North Pacolet River)

Big Fall Creek (portion above and below water supply reservoir)

Green River (Henderson County line to mouth of Brights Creek)

Little Cove Creek

Cove Creek

Camp Creek [Henderson County line (top of falls) to Green River]

Fulloms Creek (SR 1154 to Green River)

(R) Rutherford County:

Broad River (not trout water)

Rocky Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)

(S) Stokes County:

Dan River (lower Flippin property line below SR 1416 to 200 yards downstream from end of SR 1421)

(T) Surry County:

Yadkin River (not trout water)

Ararat River (SR 1727 downstream to SR 1759) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

Stewarts Creek (not trout water)

Pauls Creek (Virginia State line to SR 1625)

Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)

Little Fisher River (Virginia State line to NC 89 bridge)

Merritt Creek

(U) Swain County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah Reservoir

Tuckasegee River (not trout water)

Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)

Oconaluftee River (not trout water)

Connelly Creek

Alarka Creek

Nantahala River (Macon County line to existing Fontana Lake water level)

(V) Transylvania County:

French Broad River (junction of west and north forks to US 276 bridge)

Davidson River (Avery Creek to Ecusta intake)

East Fork French Broad River (Glady Branch to French Broad River)

Middle Fork French Broad River

West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks)

Savannah River (not trout water)

Horsepasture River (Jackson County line to existing Lake Jocassee water level)

Thompson River (SR 1152 to South Carolina state line, except where posted against trespass)

(W) Watauga County:

New River (not trout waters)

North Fork New River (~~headwaters~~ from confluence with Maine and Mine branches to Ashe County line)

Maine Branch (headwaters to North Fork New River)

South Fork New River (not trout water)

Meat Camp Creek

Norris Fork Creek

Howards Creek (downstream from lower falls)

Middle Fork New River (Lake Chetola Dam to South Fork New River)

Yadkin River (not trout water)

Stony Fork (headwaters to Wilkes County line)

Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)

Watauga River (SR 1559 to SR 1114 bridge)

Beech Creek

Buckeye Creek Reservoir

Coffee Lake

Laurel Creek

Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)

Dutch Creek (second bridge on SR 1134 to mouth)

Crab Orchard Creek

Boone Fork (headwaters to SR 1562)

(X) Wilkes County:

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) (Delayed harvest regulations apply to portion on Stone Mountain State Park) See Subparagraph (5) of Paragraph (a) of this Rule.

Stone Mountain Creek (Alleghany County line to Bullhead Creek)

Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Harris Creek (end of SR 1716 to mouth)

Pell Branch Pond

Boundary Line Pond

West Prong Roaring River (not trout waters)

Pike Creek

Pike Creek Pond

Reddies River (not trout water)

Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)

South Fork Reddies River (headwaters to NC 16 bridge)

North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)

North Prong Reddies River (Darnell Creek) (downstream ford on SR 1569 to confluence with North Fork)

Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)

Fall Creek (except portions posted against trespass)

Stony Fork Creek (headwaters to Mt. Zion bridge near intersection of SR 1155 and SR 1167)

(Y) Yancey County:

Nolichucky River (not trout water)

Cane River (Cattail Creek to Bowlens Creek)

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)

South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

- (2) Wild Trout Waters. All designated public mountain trout waters located on game lands are classified as wild trout waters unless classified otherwise. The trout waters listed in this Subparagraph are also classified as wild trout waters. On game lands all tributaries to wild trout waters are also classified as wild trout waters.
  - (A) Alleghany County:  
Ramey Creek (entire stream)
  - (B) Ashe County:  
Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.
  - (C) Avery County:  
Birchfield Creek (entire stream)  
Cow Camp Creek (entire stream)  
Cranberry Creek (entire stream)  
Horse Creek (entire stream)  
Jones Creek (entire stream)  
Kentucky Creek (entire stream)  
North Harper Creek (entire stream)  
Rockhouse Creek (entire stream)  
South Harper Creek (entire stream)  
Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)
  - (D) Buncombe County:  
Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.
  - (E) Burke County:  
All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinny Creek and the lower park boundary where delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.
  - (F) Caldwell County:  
Buffalo Creek (headwaters to lower Dahl property line)  
Joe Fork (Watauga County line to falls)  
Rockhouse Creek (entire stream)
  - (G) Jackson County:  
Gage Creek (entire stream)  
Tanasee Creek (entire stream)  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
  - (H) Mitchell County:  
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
Little Rock Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
Wiles Creek (game land boundary to mouth)
  - (I) Transylvania County:  
South Fork Mills River (entire stream)  
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
  - (J) Watauga County:  
Watauga River (Avery County line to SR 1559)  
Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Howards Creek (headwaters to lower falls)
  - (K) Wilkes County:  
Big Sandy Creek (portion on Stone Mountain State Park)  
Garden Creek (portion on Stone Mountain State Park)  
Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]  
Widow Creek (portion on Stone Mountain State Park)

(L) Yancey County:

Lickskillet Creek (entire stream)  
Middle Creek (game land boundary to mouth)  
Rock Creek (game land boundary to mouth)  
South Toe River (game land boundary downstream to Clear Creek)

- (3) Catch and Release/Artificial Lures Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Harris Creek and tributaries (portions on Stone Mountain State Park, Wilkes County)  
Big Horse Creek, excluding tributaries (Virginia state line to SR 1361 bridge, Ashe County)  
Three Top Creek (portion located on ~~Bluff Mountain~~ Elk Ridge Game Lands, Ashe County)  
Wilson Creek (game lands portion, including tributaries, Avery County)  
Upper Creek, Yancey County  
Lower Creek, Yancey County  
Tuckasegee River including all tributaries above the Clarke property, Jackson County  
Flat Creek, Jackson County

Carter Creek (game lands portion), Buncombe County

- (4) Catch and Release/Artificial Flies Only. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River, Watauga County)  
South Toe River (portion from the concrete bridge above Black Mountain Campground downstream to the game land boundary, excluding Camp Creek and Neals Creek, Yancey County)  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek, Avery County)  
Davidson River (headwaters to Avery Creek excluding Avery Creek, Looking Glass Creek, and Grogan Creek, Transylvania County)

- (5) Delayed Harvest. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 March and the Friday before the first Saturday in June, inclusive, only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. On the first Saturday in June these streams revert to Hatchery Supported Waters regulations:

Ararat River (SR 1727 downstream to SR 1759, Surry County)  
East Prong Roaring River (from Bullhead Creek downstream to the lower Stone Mountain State Park boundary, Wilkes County)  
Jacob Fork (Shinny Creek to lower South Mountain State Park boundary, Burke County)  
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal, Swain County)

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3) and (4) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.

- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess ~~live or preserved~~ natural bait while fishing wild trout waters.
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

#### **.0208 SPAWNING AREAS**

The following waters are designated as spawning areas in which fishing is prohibited or restricted as indicated:

- (1) ~~No person shall fish by any method or at any time in, or within 50 feet of, the fish ladder at Quaker Neck Dam on Neuse River in Wayne County.~~
- (1) (2) No person shall fish by any method from February 15 to April 15, both inclusive, in Linville River from the NC 126 bridge downstream to the backwater of Lake James in Burke County.
- (2) (3) No person shall fish by netting in that portion of the Dan River lying within the State downstream from the Brantly Steam Plant at Danville, or in the Roanoke River between the US 258 bridge and the dam of Roanoke Rapids Lake, or while in or on said rivers within said areas, have in possession any bow net, dip net or any landing net having a handle exceeding eight feet in length or a hoop or frame to which the net is attached exceeding 60 inches along its outside perimeter.

*Statutory Authority G.S. 113-134; 113-292.*

### **SECTION .0300 - GAME FISH**

#### **.0302 MANNER OF TAKING INLAND GAME FISHES**

Except as provided below, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. ~~rod and reel, or by casting.~~ Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by 15A NCAC 10C .0407 shall be immediately returned to the water unharmed, except that spotted sea trout may be retained without limit.

*Statutory Authority G.S. 113-134; 113-272; 113-292; 113-302.*

#### **.0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in. (exc. <del>15</del> 14)	ALL YEAR (exc. 2)
Hatchery Sup- ported Trout Waters and undesignated waters	7	None	All year, except March 1 to 7:00 a.m. on first Saturday in April (excs. 2 & 3)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR

**PROPOSED RULES**

Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 9 & 10)	None	ALL YEAR (exc. 9)
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth (exc. 10)	5 (excs. 4, 8 & 11)	14 in. (exc. 13)	ALL YEAR
Smallmouth and Spotted	5 (exc. 10) 8 & 11)	12 in. (excs. 4, 8 & 11)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spot- ted or Speckled)	None	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	5	18 in.	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 6)	16 in. (excs. 1, 6 & 12)	ALL YEAR (excs. 6, <del>46</del> <u>15</u> , and <del>48</del> <u>17</u> )
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 5 & <del>44</del> <u>13</u> )	None (exc. <del>44</del> <u>13</u> )	ALL YEAR (exc. 5)
NONGAME FISHES	None (exc. <del>47</del> <u>16</u> )	None (exc. <del>47</del> <u>16</u> )	ALL YEAR (exc. 7)

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Under an agreement with Tennessee, the minimum size limit on trout in Calderwood Reservoir is seven inches.
- (4) Bass taken from streams designated as public mountain trout waters or from Calderwood Reservoir may be retained without restriction as to size limit.



- (5) On Mattamuskeet Lake, special federal regulations apply.
- (6) In the inland fishing waters of Cape Fear, Neuse, Pungo and Tar-Pamlico ~~Rivers~~ rivers and their tributaries extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is one fish and the minimum length limit is 18 inches. In the Roanoke River up to the first impoundment, from July 1 through March 31 and June 1 through June 30 the daily creel limit for striped bass is one fish and the minimum length limit is 18 inches; from April 1 to May 31 the daily creel limit is three fish, no fish between the lengths of 22 inches and 27 inches may be retained, and the minimum length limit is 16 inches, except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, in Lake Mackintosh in Alamance and Guilford counties, in Lake Rim in Cumberland County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. In and west of Madison, Buncombe, Henderson and Polk Counties the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (11) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County; and
  - (B) Lake Thom-A-Lex in Davidson County.
- (12) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- ~~(13) In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.~~
- ~~(14)~~ (13) In Lake Tillery, Falls Lake, Badin Lake, and Tuckertown Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- ~~(15)~~ (14) In Slick Rock Creek the minimum size is 7 inches for brook trout and 10 inches for brown and rainbow trout.
- ~~(16)~~ (15) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- ~~(17)~~ (16) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- ~~(18)~~ (17) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

**SECTION .0400 - NONGAME FISH**

**.0404 SPECIAL DEVICE FISHING**

(a) Bow and Arrow. The use of ~~longbow~~ bow [as defined in 15A NCAC 10B .0116(a)] and arrow as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless specifically prohibited, ~~longbow~~ bow and arrow may be used in joint fishing waters. It is unlawful to take fish with crossbow and arrow in any inland fishing waters.

(b) Nets. Manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license.

- (1) No fixed gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline, except in the Neuse, Trent, Northeast Cape Fear, Cape Fear, and Black Rivers and their tributaries. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following: owner's N.C. motor boat registration number, or owner's U.S. vessel documentation name, or owner's last name and initials.
- (2) It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(c) Traps. Baskets and traps, including automobile tires, may be used under the special device fishing license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed ten feet in length or three feet in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special fishing device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. Persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

*Statutory Authority: G.S. 113-134; 113-272.2; 113-276; 113-292.*

**SECTION .0500 - PRIMARY NURSERY AREAS**

**.0503 DESCRIPTIVE BOUNDARIES**

The following waters have been designated as primary nursery areas:

- (1) North River:
  - (a) ~~Board~~ Broad Creek - Camden County - Entire stream;
  - (b) Deep Creek - Currituck County - Entire stream;
  - (c) Lutz Creek - Currituck County - Entire stream.
- (2) Alligator River:
  - (a) East Lake - Dare County - Inland waters portion;
  - (b) Little Alligator River - Tyrrell County - Entire stream.
- (3) Currituck Sound:
  - (a) Martin Point Creek - Dare County - Entire stream (Jean Guite Creek);
  - (b) Tull Creek and Bay - Currituck County - Tull Bay to mouth of Northwest River; Tull Creek from mouth upstream to SR 1222 bridge.
- (4) Pamlico River:
  - (a) Duck Creek - Beaufort County - Entire stream;
  - (b) Bath Creek - Beaufort County - Entire stream;
  - (c) Mixons Creek - Beaufort County - Entire stream;
  - (d) Porter Creek - Beaufort County - Entire stream;
  - (e) Tooleys Creek - Beaufort County - Entire stream;

- (f) Jacobs Creek - Beaufort County - Entire stream;
- (g) Jacks Creek - Beaufort County - Entire stream;
- (h) Bond Creek - Beaufort County - Entire stream;
- (i) Muddy Creek - Beaufort County - Entire stream;
- (j) Strawhorn Creek - Beaufort County - Entire stream;
- (k) South Prong Wright Creek - Beaufort County - Entire stream;
- (l) Jordan Creek - Beaufort County - Entire stream.
- (5) Neuse River:
  - (a) Slocum Creek - Craven County - Entire stream;
  - (b) Hancock Creek - Craven County - Entire stream.
- (6) New River:
  - (a) French Creek - Onslow County - Entire stream;
  - (b) New River - Onslow County - US Highway 17 bridge to point 0.75 miles upstream.

*Statutory Authority G.S. 113-132; 113-134.*

## SUBCHAPTER 10D - GAME LANDS REGULATIONS

### .0004 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide regulations. All game lands are open to public fishing except restocked ponds on the New Hope Game Land when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0403 may be used in any of the impounded waters located on the Sandhills Game Land. The game lands license is required to fish on designated public mountain trout waters on game lands.

(b) Designated Public Mountain Trout Waters

- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land from one-half hour after sunset to one-half hour before sunrise, except that night fishing is permitted in the game lands sections of the Nantahala River located downstream from the Swain County line.
- (2) Location. All waters located on the game lands listed in this Subparagraph, except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to Tennessee line, and Nolichucky River are designated public mountain trout waters:
  - ~~Bluff Mountain Elk Ridge~~ Game Land, Ashe County
  - Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania
  - Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey
  - South Mountains Game Land in Burke County
  - Thurmond Chatham Game Land in Wilkes County
  - Toxaway Game Land in Transylvania County
- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

*Statutory Authority G.S. 113-134;113-264;113-272; 113-292; 113-305.*

\*\*\*\*\*

*Services intends to adopt rules cited as 15A NCAC 16A .1101 - .1108, .1150 - .1151, .1201 - .1209.*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Commission for Health

**The** proposed effective date of this action is April

1, 1993.

*The public hearing will be conducted at 1:30 p.m. on January 11, 1993 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.*

**Reason for Proposed Action:** To implement Breast and Cervical Cancer Screening and Follow-up Program as soon as possible in order to comply with recent federal funding requirements, to simplify the Diagnosis and Payment Program Rules as well as to assure that they reflect current medical practice.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919)733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS. WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

**Editor's Note:** These Rules were filed as temporary adoptions effective December 1, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

## CHAPTER 16 - ADULT HEALTH

### SUBCHAPTER 16A - CHRONIC DISEASE

#### SECTION .1100 - CANCER DIAGNOSTIC AND TREATMENT PROGRAM

##### .1101 GENERAL

(a) The Cancer Diagnosis and Treatment Program shall provide financial assistance for the medical care of indigent patients as follows:

- (1) diagnostic services for cancer; and
- (2) treatment services for cancer.

(b) Rules for the Breast and Cervical Cancer Screening and Follow-up Program are found in 15A NCAC 16A .1200.

(c) The Cancer Diagnosis and Treatment Program shall be administered by the Division of Adult Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.

##### .1102 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Cervical intraepithelial neoplasia (CIN)" means any condition suggestive of pre-invasive cervical cancer which for the purpose of these Rules means mild, moderate, or severe dysplasia or carcinoma in-situ.
- (2) "Day of Service" means all covered services provided in one calendar day.
- (3) "Program" means the Cancer Diagnosis and Treatment Program.
- (4) "Year" means one year beginning with the day the patient receives the first diagnostic or treatment services reimbursed by the Program.

Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.

##### .1103 LIMITATIONS ON DAYS OF SERVICE

(a) Financial assistance shall be provided for diagnostic services for one day of services on an inpatient basis or up to two days of services on an outpatient basis per year per patient. The Program shall authorize the number of days for reimbursement based on the medical condition of the patient and the procedure to be performed.

(1) Applications for inpatient diagnostic services shall be accompanied by a written, signed statement from the attending physician that includes the following:

- (A) the medical reason that the inpatient services are required; and
- (B) the medical reason such services cannot be performed on an outpatient basis.

(2) The statement in Subparagraph (a)(1) of this Rule may be in the form of workup protocol, clinical notes, medical history, or other medical document in lieu of a separately prepared statement.

(3) The statement in Subparagraph (a)(1) of this Rule shall be reviewed by the Program which shall assess the medical need for inpatient diagnostic services.

(b) Financial assistance shall be provided for treatment services, for up to eight days of inpatient services or up to 16 days of outpatient services per year or an equivalent combination thereof for each patient. The Program shall authorize the number of days for reimbursement based on the medical condition of the patient and the procedure to be performed.

Statutory Authority G.S. 130A-220.

#### .1104 COVERED SERVICES

(a) Covered services shall include diagnostic and treatment services for cancer or a condition suggestive of cancer. Physical therapy following surgery, where medically indicated, is an approved treatment service.

(b) Service Restrictions:

- (1) Dental treatment is not covered except in cases of head and neck cancer when necessary for the delivery of oncologic care.
- (2) The Program shall not cover late discharge fees, transportation, telephone calls, or other miscellaneous charges.
- (3) Cosmetic surgery shall not be covered. This does not preclude the coverage of functional, reconstructive surgery.
- (4) Ancillary diagnostic studies shall be authorized only when they are determined by the Program to be directly related to the confirmation of a diagnosis of cancer or are necessary for treatment planning.
- (5) The Program shall not authorize reimbursement for follow-up office visits

after completion of diagnostic studies or treatment. However, this does not prohibit coverage of diagnosis or treatment of a recurrent disease.

(6) For patients suspected of having cervical intraepithelial neoplasia, the Program will not authorize treatment services unless a coloscopic directed biopsy to determine appropriate therapy has been performed. Conization or loop excision of the cervix will be considered medically necessary if one or more of the following conditions are met and documented:

- (A) Unsatisfactory colposcopy due to an inability to visualize the entire lesion or the transformation zone;
- (B) Positive endocervical curettage; or
- (C) Cytologic or histologic suspicion of invasive cancer.

Conization of the cervix will be covered only on an outpatient basis unless the Program determines that the patient's health would be jeopardized by service provided on an outpatient basis.

(7) Hysterectomy will not be covered as a primary therapy for cervical intraepithelial neoplasia.

(8) The use of any treatment, equipment, drug, device or supply not recognized as having scientifically established medical value nor accepted as standard medical treatment for the condition being treated, as determined by the Program, will not be covered.

(9) Inpatient services shall not be authorized unless the hospital is licensed in the State of North Carolina under General Statute 131E-5, the Hospital Licensure Act, or under conditions of participation for Medicare (Title XVIII of the Social Security Act) or Medicaid (Title XIX of the Social Security Act).

(c) Meals and overnight accommodations, in a motel, home, boarding house, ambulatory care facility, or similar facility for patients receiving covered services on an outpatient basis shall be covered by the Program if the patient's residence is at least 50 miles from the medical facility providing the outpatient services.

- (1) Reimbursement for actual expenses shall not exceed the maximum allowable subsistence (meals and

accommodations) for state employees in the course of their official duties, found in G.S. 138-6, based on those rates of reimbursement in effect at the time of the authorization of these expenses by the Program.

- (2) Program authorization of meals and accommodations shall be limited to the maximum number of days of service coverage. However, the Program shall cover meals and accommodations for weekends between the periods during which treatment is authorized.
- (3) Authorization Requests for meals and accommodations shall state the number of days which will be required, as well as the dates of service on which outpatient diagnostic or treatment services shall be rendered.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317 Public Health Services Act, as amended.*

#### .1105 FINANCIAL ELIGIBILITY

Financial eligibility for the Program shall be determined in accordance with the rules found in 15A NCAC 24A.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

#### .1106 MEDICAL ELIGIBILITY

(a) To be medically eligible for diagnostic authorization, a patient must have a condition strongly suspicious of cancer which requires diagnostic services to confirm the preliminary diagnosis. The Program shall authorize only those services determined by the Program to be medically necessary to confirm a preliminary diagnosis.

(b) Diagnostic or treatment services for cervical intraepithelial neoplasia shall be covered by the Program if there is cytologic or histologic evidence of cervical intraepithelial neoplasia.

(c) A positive pathology report shall be required before treatment services can be authorized by the Program.

(d) Before treatment services may be authorized, the attending physician must certify that there is a 25 percent or better chance of five-year survival with initial treatment.

(e) All requests for treatment shall be reviewed by the Program. Such requests shall be authorized when the Program determines that there is at least a 25 percent chance of five-year survival with

initial treatment and that the services to be provided are medically necessary to improve the chance of survival. In determining medical eligibility, the Program may confer with the patient's attending physician, members of the Cancer Committee of the North Carolina Medical Society, and other physicians trained in the treatment of cancer.

(f) All requests for chemotherapy shall be accompanied by a protocol describing the treatment being requested.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

#### .1107 PATIENT APPLICATION PROCESS

(a) Authorization Request and Financial Eligibility Application forms may be requested by the provider from the Program at the principal address of the Division.

(b) The Authorization Request and Financial Eligibility Applications are to be completed in accordance with the Rules found in 15A NCAC 24A and the directions printed on the forms.

(c) Separate Authorization Requests are necessary for diagnosis and for treatment.

*Statutory Authority G.S. 130A-205.*

#### .1108 REIMBURSEMENT PROCESS

All claims for authorized services rendered shall be processed in accordance with rules found in 15A NCAC 24A.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

#### .1150 REPORTING OF CANCER

Every physician shall report cancers as required by G.S. 130A-209, in the manner prescribed by 15A NCAC 26.

*Statutory Authority G.S. 130A-209.*

#### .1151 CANCER REGISTRY

Rules governing the administration of the Central Cancer Registry are found in 15A NCAC 26.

*Statutory Authority G.S. 130A-205.*

### SECTION .1200 - BREAST AND CERVICAL CANCER SCREENING AND FOLLOW-UP PROGRAM

## **.1201 GENERAL**

(a) The Breast and Cervical Cancer Screening and Follow-up Program provides the following services to eligible women:

- (1) breast cancer screening and follow-up services; and
- (2) cervical cancer screening and follow-up services.

(b) The Breast and Cervical Cancer Screening and Follow-up Program is administered by the Division of Adult Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(c) Rules for the Cancer Diagnostic and Treatment Program are found in 15A NCAC 16A .1100.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## **.1202 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Breast cancer screening services" means
  - (a) a clinical breast examination and a screening mammogram in accordance with "The American Cancer Society Guidelines for the Cancer-related Check-up: Recommendations;"
  - (b) instruction in breast self-examination;
  - (c) documentation of screening test results in the patient's medical record; and
  - (d) notification to the patient of the screening test results.
- (2) "Cervical cancer screening services" means
  - (a) a pelvic examination and a Pap test in accordance with "The American Cancer Society Guidelines for the Cancer-Related Check-up: Recommendations,"
  - (b) documentation of the screening test results in the patient's medical record; and
  - (c) notification to the patient of the screening test results.
- (3) "Follow-up for breast cancer screening services" means a repeat mammogram and, when medically appropriate, a diagnostic mammogram.
- (4) "Follow-up for cervical cancer screening services" means a repeat Pap smear and, when medically appropriate, a colposcopy directed biopsy.
- (5) "Program" means Breast and Cervical

Cancer Screening and Follow-up Program;

"The American Cancer Society Guidelines for the Cancer-Related Check-up: Recommendations" is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Adult Health, 1330 St. Mary's Street, Raleigh, N.C. A copy may be obtained from the Division of Adult Health, P.O. Box 27687, Raleigh, North Carolina 27611-7687 at no cost.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## **.1203 FINANCIAL ELIGIBILITY**

(a) Patients who are at, or are below 200 percent of the Federal Poverty Guidelines in effect on July 1 of each year are financially eligible to receive services found in 15A NCAC 16A .1201, subject to the provisions of 15A NCAC 16A .1207. The Federal Poverty Guidelines are incorporated by reference including subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Adult Health, 1330 St. Mary's Street, Raleigh, North Carolina. A copy of the Federal Poverty Guidelines may be obtained at no cost from the Division of Adult Health, PO Box 27687, Raleigh, N.C. 27611-7687.

(b) Financial eligibility for the Program shall be determined by participating providers from information contained in a declaration of gross income and family size signed by the patient or a person responsible for the patient. The participating provider is authorized to require substantiating documentation when making financial eligibility determination.

(c) Once a patient is determined to be financially eligible for the Program, that eligibility shall continue for one year.

(d) The participating provider shall document each financial eligibility determination for breast and cervical cancer screening and follow-up services on a form provided by the Program.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## **.1204 MEDICAL ELIGIBILITY**

(a) Women who are age 40 or older are eligible to receive breast cancer screening and follow-up services.

(b) Women less than 40 years of age are eligible for clinical breast examination, in accordance with "The American Cancer Society Guidelines for the Cancer-related Check-up: Recommendations," instruction in breast self-examination and follow-up services.

(c) Women who have been sexually active or who are age 18 or older are medically eligible to receive cervical cancer screening and follow-up services.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

#### **.1205 PARTICIPATING PROVIDERS**

The Program may contract with local health departments, public and non-profit private entities, institutions, and agencies in order to carry out the purpose of the Program.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317 Public Health Services Act, as amended.*

#### **.1206 PATIENT APPLICATION PROCESS**

Patients may apply for breast and cervical cancer screening and follow-up services at any participating local health department or at the office of any other participating provider. A copy of the list of participating local health departments and other providers may be obtained from the Division of Adult Health, PO Box 27687, Raleigh, North Carolina 27611-7687 at no cost.

*Statutory Authority G.S. 130A-205.*

#### **.1207 APPLICATIONS FOR PROGRAM FUNDS**

(a) Applications to contract for program funds shall be accepted, reviewed and approved or disapproved each fiscal year on a schedule established by the Program.

(b) An application to contract for program funds must include information stating:

- (1) Anticipated number of persons to receive services provided by the applicant, including any services provided through contractual or other arrangements under the proposed contract;
- (2) Assurance that the applicant will adhere to medical protocols provided by the Program for cervical and breast cancer screening and follow-up;
- (3) Assurance that the applicant will participate in educational opportunities provided by the Program, and other continuing education as appropriate;
- (4) Assurance that the applicant will submit minimum data elements to the Program on a quarterly basis according to the schedule provided by the Program;
- (5) Assurance that no woman at, or below, 100 percent of the Federal Poverty Guidelines shall be charged for services provided by this Program. Women between 100 percent and 200 percent of the Federal Poverty Guidelines may be charged a fee according to the following sliding scale:

Gross Family Income As Percent  
Federal Poverty Guidelines

Percent of Fee Patient  
May Be Charged

≤ 100%

0%



> 100% - 125%	20%
> 125% - 150%	40%
> 150% - 175%	60%
> 175% - 200%	80%

The sliding fee scale must be posted in order for clients being served to view it; and

(6) Assurance that the contractor will implement a patient referral and tracking protocol.

(c) A contract shall be signed with each applicant who is approved for funding. The number of patients to be served under the contract will be negotiated annually with each contractor, approved by the Program, and included as an addendum to the contract. Contracts may be renewed upon expiration of the contract period upon determination of a continuing need for services in the area served, contractor performance, and the availability of funds.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## .1208 USE OF PROGRAM FUNDS

(a) Program funds shall be expended solely for the purposes for which the funds were made available in accordance with the rules of this Section, the approved application, the negotiated contract objectives and budget, and the terms and conditions of the award.

(b) A contractor that consistently fails to meet acceptable levels of performance as determined through site visits, review of performance reports, data submitted by the contractor, and other requirements of the rules of this Section and that has been offered program consultation and technical assistance, may have program funds reduced or discontinued.

(c) Program funds shall be used to pay only for services not reimbursable by a third party payor. A participating provider must take reasonable measures to determine and subsequently collect the full legal liability of third party payors to pay for services covered by the Program before charging expenditures to the Program.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## .1209 QUALITY ASSURANCE

(a) Facilities performing mammograms as a part of breast cancer screening and follow-up services under this Section shall be certified in accordance with Rules codified in 10 NCAC 3W.0200 - Mammography Certification. After January 1, 1993, facilities must be accredited by the American College of Radiology for the performance of mammography. A copy of 10 NCAC 3W.0200 may be obtained from the Division of Adult Health, PO Box 27687, Raleigh, North Carolina 27611-7687 at no cost.

(b) Laboratories evaluating Pap smears as a part

of cervical cancer screening and follow-up services under this Section shall be certified in accordance with rules codified in 10 NCAC 3W.0100 - Pap Smear Certification. A copy of 10 NCAC 3W.0100 may be obtained from the Division of Adult Health, PO Box 27687, Raleigh, North Carolina 27611-7687 at no cost.

*Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.*

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rules cited as 19A NCAC 2E.0201 and .0210.*

*The proposed effective date of this action is March 1, 1993.*

*Instructions on How to Demand a Public Hearing: A demand for a public hearing must be made in writing and mailed to N.C. Department of Transportation, P. O. Box 25201, Raleigh, NC 27611, Attn: Emily Lee. The demand must be received within 15 days of this Notice.*

*Reason for Proposed Action: .0201: Additional conditions have been added to the definitions and clarifying phrases have been added. .0210: Revocation conditions have been clarified and conditions have been added.*

*Comment Procedures: Any interested person may submit written comments on the proposed rule by*

mailing the comments to: N.C. Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, Attn: Emily Lee, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.

## CHAPTER 2 - DIVISION OF HIGHWAYS

### SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

#### .0201 DEFINITIONS FOR OUTDOOR ADVERTISING CONTROL

(a) Commercial or Industrial Activities for Unzoned Areas. Those activities generally recognized as commercial or industrial by zoning authorities in the state, ~~and, in addition, any~~

(1) Any commercial or industrial activity shall meet all of the following criteria to qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control:

(1A) The activity shall have all privilege license(s) required by local, state, or federal authorities as required by law ~~for that type activity;~~

(2B) The property used for the activity shall be listed for ad valorem taxes with the county ~~and/or~~ and municipal taxing authorities as required by law;

(3C) The activity shall be served by available utilities (power, telephone, water, and sewer);

(4D) The activity shall have direct or indirect vehicular access ~~(direct/indirect)~~ and ~~the activity shall~~ be a generator of vehicular traffic;

(5E) The activity shall have a permanent building designed, built ~~and/or~~ modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way;

(6F) There shall be commercial or industrial activity at the location six months before the area qualifies for sign(s);

(7G) Employee(s) shall be on site during normal working hours which are considered usual, normal, ~~and/or~~ customary for that type activity; ~~and~~

(8H) There shall be a frequency of operations which is considered usual, normal ~~and/or~~ customary for that type commercial ~~or~~ industrial operation;

and

(I) The activity shall be visible and recognizable as commercial or industrial.

(9J) For the purpose of controlling outdoor advertising, none of the following activities shall be commercial or industrial:

(A) Outdoor advertising structures;

(B) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to temporary wayside fresh ~~product~~ produce stands;

(C) Transient or temporary activities;

(D) Activities not visible from the main traveled way;

(E) Activities more than 660 feet from the nearest edge of the right of way;

(F) Activities conducted in a building principally used as a residence;

(G) Railroad tracks and minor sidings;

(H) Any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity;

(I) Any activity which is seasonal or not in operation for the twelve continuous months immediately preceding the application for an outdoor advertising permit;

(J) Illegal junkyards, as defined in GS 136-146, and nonconforming junkyards as set out in GS 136-147.

(10) ~~Any sign erected using the criteria stipulated in Paragraph (a) of this Rule shall be removed at the owner's expense if any provision of Paragraph (a) of this Rule is violated or is no longer in existence within 24 months of the date of issuance of the permit.~~

(b) Zoned Commercial or Industrial Areas. Those areas which are zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation.

(c) Unzoned Commercial or Industrial Areas:

(1) Those areas which are not zoned by state or local law, regulation, or ordinance, and which are within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system in which there are located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is

actually conducted, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the interstate and/or federal-aid primary route shall be considered separately.

- (2) All measurements shall begin from the outer edges of regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, not from the property line of the activities, and shall be along the edge of pavement of the highway.

(d) Traveled Way. ~~The traveled way of a~~ That part of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a ~~main~~ traveled way. It does not include ~~such facilities as~~ frontage roads, turning roadways, or parking areas.

(e) Main-traveled Way. ~~The traveled way of a~~ That part of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include ~~such facilities as~~ frontage roads, turning roadways, or parking areas.

(f) Sign. ~~A sign is any~~ Any outdoor sign, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other ~~thing~~ object which is designed, intended, or used to advertise or inform or any part of the advertising or information ~~contents of~~ which is visible from any part of the main-traveled way of the interstate or federal-aid primary highway system.

(g) Maintain. ~~To allow~~ Allow to exist.

(h) Scenic Area. ~~A scenic area is any~~ Any area of particular—~~scenic~~ beauty or historical significance as determined by the federal, state, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of ~~scenic~~ beauty.

(i) Parkland. Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site ~~is a parkland~~.

(j) Freeway. ~~A freeway is a~~ A divided arterial highway for through traffic with full control of access.

(k) Directional and Other Official Signs and Notices. ~~Directional and other official signs and notices includes only official signs and notices.~~ Include public utility signs, service club and religious notices, and public service signs, ~~and~~

~~directional signs.~~

(l) Official Signs and Notices. ~~Official signs~~ Signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with ~~direction or authorization contained in~~ federal, state, or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.

(m) Public Utility Signs. Warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations ~~are public utility signs~~.

(n) Service Club and Religious Notices. Signs and notices, ~~whose erection is authorized by law; relating which relate~~ to meetings of nonprofit service clubs, ~~or~~ charitable associations, or religious services ~~;~~ which ~~These signs do shall~~ not exceed eight square feet in area ~~are service club and religious notices~~.

(o) Public Service Signs. ~~Public service signs are signs~~ Signs located on school bus stop shelters; ~~which signs comply with the following:~~

- (1) ~~identify~~ Identify the donor, sponsor or contributor of said shelters;
- (2) ~~contain~~ Contain safety slogans or messages, which shall occupy not less than 60 percent of the area of the sign;
- (3) ~~contain~~ Contain no other message;
- (4) ~~are~~ Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and
- (5) ~~may~~ May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(p) Directional Signs. Signs containing directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public ~~are directional signs~~.

(q) Controlled-Access Highway. Highway on which ~~access is~~ entrance and exit accesses are permitted only at designated ~~access~~ points.

(r) On-premise Sign. A sign which advertises the sale or lease of property upon which it is located or ~~a sign which advertises activities conducted on the property upon which it is located.~~

(s) Lease. An agreement, in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

(t) Blank Sign. A sign ~~with which contains no advertising message or which contains a message advertising its availability.~~

(u) Abandoned Sign. A sign in which the sign owner no longer has an interest. Absence of a valid lease is one indication of an abandoned sign.

(v) Destroyed Sign. A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example ~~of a destroyed sign would be a sign~~ is a sign which has been completely blown down by the wind.

(w) Sign Conforming by Virtue of the "Grandfather Clause." A sign legally erected prior to the effective date of the Outdoor Advertising Control Act in a zoned or unzoned commercial or industrial area which does not meet the standards for size, spacing and lighting passed at a later date.

(x) Conforming Sign. A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current standards for size, spacing and lighting.

(y) Dilapidated Sign. An existing sign shall be considered dilapidated when it is in disrepair, shabby or neglected, when it fails to be in the same form as originally constructed, or when it fails to perform its intended function of conveying a message. Conditions of dilapidation shall include, but not be limited to, structural support failure, signs not held as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or signs which are overgrown by vegetation.

(z) Visible commercial or industrial activity. An activity that is ~~capable of being clearly~~ seen from the main-traveled way without visual aid by a person ~~of normal visual acuity~~ traveling at the posted speed and which is recognizable year-round as a commercial or industrial activity.

(aa) Sign location. A sign location, for permitting purposes, shall be measured at the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads.

Statutory Authority G.S. 136-130; 136-147.

## .0210 REVOCATION OF PERMIT

Any valid permit issued for a lawful outdoor advertising structure shall be revoked by the appropriate district engineer for any one of the following reasons:

- (1) mistake of material facts by the issuing authority for which had the correct facts been made known, the outdoor advertising permit in question would not have been issued;
- (2) misrepresentations of material facts by the outdoor advertiser on the application for permit for outdoor advertising;
- (3) failure to pay annual renewal fees ~~and/or~~ or provide the documentation required under Rule .0207(c) of this Section;
- (4) failure to construct the outdoor advertising structure and affix the permanent emblem within 180 days from the date of issuance of the outdoor advertising permit;
- (5) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act and the rules and regulations promulgated by the Board of Transportation pursuant thereto;
- (6) making alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause which would cause it to be other than substantially the same as it was on the date the sign became nonconforming, or a grandfather clause sign. Alterations to a sign which would cause it to be other than substantially the same as it was on the date the sign became nonconforming or a grandfather clause sign include any of the following:
  - (a) ~~enlarges~~ enlarging a dimension of the sign facing, or ~~that raises~~ raising the height of the sign;
  - (b) changing the material of the sign structure's support;
  - (c) adding a pole or poles;
  - (d) adding illumination; or
  - (e) making any other alteration of a nonconforming outdoor advertising structure or a sign conforming by virtue of a grandfather clause.
- (7) failure to affix permanent permit emblem within 30 days after erection of the

- (8) outdoor advertising structure;  
unlawful destruction of trees or shrubs or other growth located on the right of way in order to increase or enhance the visibility of an outdoor advertising structure;
- (9) unlawful violation of the control of access on interstate, freeway, and other controlled access facilities;
- (10) failure to maintain a sign such that it remains blank for a period of 12 consecutive months;
- (11) failure to maintain a sign such that it reaches a state of dilapidation as defined in Rule .0201(y) of this Section;
- (12) abandonment or destruction of a sign;
- (13) violation of the criteria set out in Rule .0201(a) of this Section or when the criteria set out in Rule .0201(a) of this Section is no longer in existence within 24 months of the date of the issuance of the permit;
- (14) failure to provide the appropriate district engineer with written notice of any proposed alteration to a nonconforming sign or a sign conforming by virtue of a grandfather clause;
- (15) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be plainly visible in accordance with G.S. 105-86(e);
- (16) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Articles 11 and 11A, and the rules and regulations promulgated by the Board of Transportation;
- (17) failure to maintain the permit emblem so that it is visible and readable from the main-traveled way.

Statutory Authority G.S. 136-130; 136-134; 105.86(e); 136-126 through 140.9.

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners of Electrical Contractors intends to amend rules cited as 21 NCAC 18B .0104, .0203, .0206, .0306, .0401,

.0403, .1001, .1003, .1103 and repeal rule cited as 21 NCAC 18B .0703.

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 1:30 p.m. on December 16, 1992 at the Board's Office at 1200 Front Street, Suite 105, Raleigh, NC 27609.*

### *Reason for Proposed Actions:*

21 NCAC 18B .0104 - To update rule with current job titles.

21 NCAC 18B .0203 - To update specifications for scope of qualifying examinations and delete obsolete specifications.

21 NCAC 18B .0206 - To allow flexibility in scheduling sites for regular semi-annual examinations.

21 NCAC 18B .0306 - To clarify conditions of bona fide employee status under G.S. 87-43.1(3).

21 NCAC 18B .0401 - To specify other financial information that will be considered by the Board pursuant to G.S. 87-43.2(a)(4).

21 NCAC 18B .0403 - To clarify that a place of business can be issued licenses in different classifications where the place of business has one listed qualified individual who is qualified in different classifications.

21 NCAC 18B .0703 - Reciprocal Agreement terminated effective July 16, 1992.

21 NCAC 18B .1001 - To update listing of forms furnished by the Board.

21 NCAC 18B .1003 - To update listing of publications available from the Board.

21 NCAC 18B .1103 - To revise minimum requirements for applicants to satisfy to be considered for approval as continuing education course instructors.

*Comment Procedures:* Any person interested in

these rules may present oral comments relevant to the actions proposed at the public hearing or deliver written comments to the N. C. State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609, not later than 12:30 p.m. on December 16, 1992.

## CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

### SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

#### SECTION .0100 - GENERAL PROVISIONS

##### .0104 AUTHORIZED LEGAL ACTION BY STAFF

(a) The following members of the Board's staff are authorized to act on behalf of the Board in criminal and civil actions brought under the provisions of G.S. 87-48:

- (1) the Board's executive director;
- (2) the Board's ~~field representative coordinator; and~~ examinations and field supervisor; and
- (3) the Board's field representatives/investigators.

(b) These staff members, under the supervision of the Board's secretary-treasurer, shall have in addition to their other duties as set by the executive director, the duty to assist the secretary-treasurer in maintaining a registry of all licenses issued to electrical contractors.

(c) These staff members are authorized to give affidavits, act as plaintiffs, verify complaints, sign criminal warrants, testify in court or in other proceedings and to perform all other acts as may be required in criminal and civil actions.

*Statutory Authority G.S. 87-40; 87-42; 87-43.*

#### SECTION .0200 - EXAMINATIONS

##### .0203 EXAMINATION SCOPE

(a) General. In addition to the examination scope specified in G.S. 87-42, qualifying examinations for each license ~~classifications~~ classification shall include the ~~basic~~ North Carolina ~~and federal~~ laws and rules applicable to electrical contracting, including revenue license requirements and permit and inspection requirements.

(b) Variation in Scope. The examinations for each license classification shall be based on a level

of technical and practical knowledge concerning the safe and proper installation of electrical work and equipment which is appropriate and corresponds to the electrical contracting work authorized under each license classification.

*Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.*

##### .0206 REGULAR SEMI-ANNUAL EXAMINATIONS

The executive director is authorized to arrange for regular semi-annual examinations to be held ~~in the vicinities of Raleigh, Asheville and Williamston, N.C.,~~ during the months of March and September of each year. The Board may establish such other ~~examination places and~~ dates as it deems necessary.

*Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.*

#### SECTION .0300 - DEFINITIONS AND EXPLANATIONS OF TERMS APPLICABLE TO LICENSING

##### .0306 BONA FIDE EMPLOYEE

(a) For the exemption for electrical work done as a bona fide employee of a license under G.S. 87-43.1(3), the following conditions must be met:

- (1) ~~The employing licensee must hold a license issued by the Board. The restrictions of the license apply to both the licensee and any employee of the licensee. The restrictions of the employing licensee's license apply to any employee of the licensee.~~
- (2) ~~The work performed by the individual must be performed as an employee of the licensee during the hours the individual is actually working as an employee of the employing licensee, and must be restricted to the specific electrical work which the individual is doing for, and in the name of, the licensee. The employing licensee shall have control and direction of the details, methods and manner of performing the electrical work being done by the employee. The manner of payment, if any, to the person shall not be the sole determining factor concerning whether the person is an employee.~~
- (3) ~~The individual must receive compensation from the employing licensee that is reasonable related to the~~

hours worked or the work accomplished by the individual for the licensee. The electrical work shall be performed under the supervision and direction of a listed qualified individual who is the employing licensee, or under the supervision and direction of a listed qualified individual regularly employed by the employing licensee.

(4) ~~The related compensation must be reported by the employing licensee to the federal and state tax authorities as earnings of the individual employee, with appropriate deductions taken and reported for withholding taxes and FICA contributions.~~

(5) ~~Consistent with applicable laws, the individual employee must be covered by the employing licensee's workers' compensation insurance.~~

(b) ~~G.S. 87-43 and G.S. 87-43.2 are interpreted as setting out an additional requirement which must be met by subject parties in order to qualify for the employee exception. These statutes are interpreted to require that all electrical work done in the name of the employing licensee be performed under the direction and supervision of a listed qualified individual regularly employed by the licensee. The Board may, at its discretion, call for satisfactory evidence that this requirement has been or is being fulfilled with respect to the individual employee and the specific work for which the exception is claimed. The employing licensee, the employee, and every listed qualified individual of the licensee shall furnish any information the Board may require, including affidavits, to evaluate and determine a claim of employee exemption.~~

(c) ~~G.S. 87-43 and 87-43.2 are further interpreted as placing a joint responsibility on the employing licensee, the individual employee, and every listed qualified individual to furnish any information the Board may require to evaluate and determine a claim of employee exception. Ordinarily, the employing licensee will be expected to provide information in affidavit form on a form furnished by the Board.~~

(c) (d) When the information furnished to the Board does not substantiate compliance with this Rule, the individual shall be deemed to be an independent contractor rather than an employee and shall be subject to G.S. Chapter 87, Article 4.

(e) ~~When it is determined that a claim of employee exception is not in compliance with this Rule, the Board has the duty to determine what, if~~

~~any, action shall be taken with respect to the alleged employing licensee or the alleged individual employee to assure compliance with the North Carolina Electrical Contracting Licensing Act, so that the life, health, safety and property of the public may be protected.~~

Statutory Authority G.S. 87-42; 150B-11(1).

## SECTION .0400 - LICENSING REQUIREMENTS

### .0401 LICENSE APPLICANTS: REQUIREMENTS FOR EACH CLASSIFICATION

(a) An applicant for an electrical contracting license in each of the license classifications shall:

- (1) submit a completed application to the Board on a form provided by the Board for the license classification involved;
- (2) submit the annual license fee for the license classification involved as prescribed in Rule .0404 of this Section; and
- (3) furnish the name, signature and social security number of at least one person to serve as the listed qualified individual for the applicant's license.

(b) Corporation or Partnership. If the license applicant is a corporation or partnership, the application shall contain the names and titles of the officers or names of the partners, whichever is applicable.

(c) Intermediate and Unlimited Classifications. License applicants in the intermediate and unlimited classifications shall also furnish a bonding ability statement or a line of credit letter issued by a bank, savings bank, or savings and loan association pursuant to G.S. 87-43.2(a)(4).

(d) Special Classifications. A license applicant in the SP-EL, SP-PH, SP-WP, SP-ES or SP-SP classification must also include on the license application information verifying that the applicant is conducting a lawful business in the State of North Carolina in the license classification involved.

Statutory Authority G.S. 87-42; 87-43.2; 87-43.3; 87-43.4.

### .0403 SEPARATE LICENSE REQUIREMENTS

(a) A separate license certificate and license fee shall be required for each separate place of business with at least one listed qualified individual

indicated thereon. No listed qualified individual shall be indicated on more than one license certificate at the same time except where a place of business has one listed qualified individual with licenses issued in different classifications. ~~The listed qualified individual or individuals indicated on the separate license certificate shall be responsible for supervising and directing the electrical work performed by the separate place of business covered under the certificate.~~

(b) As used in G.S. 87-43, the term "each separate place of business" means:

- (1) the one place of business of a firm in the case where an electrical contracting firm conducts its business from only one place; and
- (2) the principal place of business and each of the other places of business of a firm in the case where an electrical contracting firm is conducting its business from more than one place.

Statutory Authority G.S. 87-42; 87-43; 87-43.2.

## SECTION .0700 - LICENSING RECIPROCITY

### .0703 RECIPROCITY: VIRGINIA

~~Pursuant to the provisions of Rule .0701 of this Section and the formal resolution agreement between the Board and the Virginia State Board for Contractors, licensees of the Virginia Board, who are non-residents of North Carolina, are eligible to apply for and obtain a North Carolina electrical contracting license and North Carolina licensees, who are non-residents of Virginia, are eligible to apply to the Virginia board and obtain a Virginia electrical contracting license in classifications as prescribed in the following table:~~

#### VIRGINIA LICENSEE ELIGIBLE FOR NORTH CAROLINA LICENSE

Class A  
Limited, intermediate or unlimited

#### NORTH CAROLINA LICENSEE ELIGIBLE FOR VIRGINIA LICENSE

Intermediate  
Class A  
Unlimited  
Class A

Statutory Authority G. S. 87-42; 87-50.

## SECTION .1000 - DESCRIPTION OF FORMS, CERTIFICATES AND PUBLICATIONS

### .1001 FORMS PROVIDED BY THE BOARD

(a) Examination Applications. An application is provided to a person wishing to apply to take a qualifying examination for an electrical contracting license. The application is designed for an applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) age;
- (4) social security number;
- (5) whether or not applicant has taken a qualifying examination previously;
- (6) classification of license for which applicant wishes to qualify and amount of application-examination fee;
- (7) educational background;
- (8) experience background;
- (9) character references;
- (10) criminal convictions;
- (11) ~~(10)~~ other references or information applicant wishes the Board to consider;
- (12) ~~(11)~~ authorization for board to research all information submitted on or in support of applicant; and
- (13) ~~(12)~~ signature of applicant.

(b) Examination Review Applications. Each failing examinee is provided a form for his use in applying for a detailed review of his failed examination. This form is designed for the applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) social security number;
- (4) date he took his failed examination;
- (5) location in which he took his failed examination;
- (6) examination review fee; and
- (7) signature of applicant.

(c) License Applicants. Each license applicant is provided with an application form for his use in initially applying for a license. The application form is designed for the applicant to furnish the following information:

- (1) classification of license for which he is applying;
- (2) name in which he wishes the license to be issued;
- (3) business mailing and location address;
- (4) business and home telephone numbers;
- (5) whether business is partnership or corporation and, if so, the names of the



- partners or the names and titles of officers of the corporation;
- (6) whether business is to be operated part-time or full-time;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on the license;
- (8) annual license fee;
- (9) criminal convictions;
- (10) ~~(9)~~ authorization for board to research all information submitted on or in support of application;
- (11) ~~(10)~~ date; and
- (12) ~~(11)~~ signature and title of applicant.

(d) License Renewal Applications. Each licensee is provided with an annual license renewal application prior to the expiration of his current annual license. This application form is designed for the licensee to furnish the following information:

- (1) name in which his license is currently issued;
- (2) whether license is to be renewed in same name or, if not, new name in which he wishes license to be renewed;
- (3) mailing and business location address;
- (4) business and home telephone numbers;
- (5) whether business is to be operated part-time or full-time;
- (6) whether business is partnership or corporation and, is if so, the names of the partners or the names and titles of officers ~~in~~ of the corporation;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on new annual license;
- (8) annual license fee;
- (9) authorization for board to research all information submitted on or in support of application;
- (10) date; and
- (11) signature and title of applicant.

(e) Request for Change of Name or Address in Which License Is Issued. A licensee wishing to change his license name or address is furnished a form for his use in requesting a change of name or address. This form is designed for the licensee to furnish the following information:

- (1) name and address in which license is currently issued;
- (2) name and address in which license is to be reissued;
- (3) whether business is to be operated part-time or full-time;

- (4) whether business is partnership or corporation and, if so, the names of the partners or the names and titles of officers ~~in~~ of the corporation;
- (5) certification of listed qualified individual by name and conditions of employment;
- (6) name and title of person filing request and date of request; and
- (7) signature of listed qualified individual.

(f) License Applications: South Carolina Reciprocity. These forms are designed for an applicant to furnish the same type of information as is provided on the forms described in Paragraphs (c) and (d) of this Rule, with the following additional information:

- (1) name in which applicant's current South Carolina license is issued;
- (2) classification of applicant's South Carolina license;
- (3) number of current South Carolina license;
- (4) statement from South Carolina Licensing Board for Contractors certifying the individuals who are qualified under the applicant's South Carolina license and the extent of each individual's qualifications; and
- (5) names, signatures and social security numbers of the listed qualified individuals on South Carolina license and to be indicated as such on North Carolina license.

~~(g) License Application: Virginia Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.~~

(g) ~~(h)~~ License Application: Alabama Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.

(h) ~~(i)~~ License Application: Georgia Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.

(i) ~~(j)~~ Bonding Ability Statement. A bonding ability statement form is provided to an applicant wishing to obtain a license in either the intermediate or unlimited classification. This form is to be completed by a bonding company duly licensed to issue performance bonds in North Carolina. The form is designed for the bonding company to state

its bonding experience with the applicant and amount of performance bond the bonding company would be willing to issue to the applicant ~~at~~ on the date the form is completed and signed. The signer's power of attorney must accompany the bonding ability statement form.

(j) ~~(k)~~ Certification of Listed Qualified Individual. This form is provided to any licensee or applicant for a license whose listed qualified individual is someone other than the licensee or applicant for a license. This form is designed for the licensee or applicant for a license to certify who will be the listed qualified individual for the licensee and that the listed qualified individual is, or will be, regularly employed by the licensee and has, or will have, the specific duty and authority to supervise and direct all electrical installation, maintenance, alteration or repair of any electric wiring, devices, appliances or equipment done in the name of the licensee.

(k) ~~(h)~~ Affidavit certifying Bona Fide Employee. This affidavit form is provided to any licensee whose relationship with his employees has been challenged and it is alleged that ~~some~~ someone other than his bona fide employee is engaged in electrical work under the auspices of his license. The form must contain the signature and title of the person completing the form and must be notarized. The form is designed for the licensee to furnish information establishing ~~that~~ compliance with the requirements of Rule .0306(a)(2) and (3) of this Subchapter.

- ~~(1) — the person in question is employed by the licensee in the capacity of a mechanic (journeyman electrician);~~
- ~~(2) — the employee receives compensation from the licensee which is reasonably related to the hours worked, or the work accomplished, by the employee for the licensee;~~
- ~~(3) — the related compensation paid to the employee is reported to federal and state tax authorities as earnings of the individual employee with appropriate deductions taken and reported for withholding taxes and FICA contributions;~~
- ~~(4) — consistent with applicable laws, the employee is covered by the licensee's workers' compensation insurance; and~~
- ~~(5) — all work performed by the employee is performed under the direction and supervision of a listed qualified individual regularly employed by the licensee.~~

Statutory Authority G.S. 87-42; 150B-11.

### .1003 PUBLICATIONS AVAILABLE FROM THE BOARD

The following publications are available from the Board:

- (1) Laws applicable to electrical contracting in the State of North Carolina;
- (2) Rules of the Board, including rules of general applicability and rules applicable to special restricted classifications;
- (3) Information booklet for persons applying to take the qualifying examination for an electrical contracting license in ~~the limited, intermediate or unlimited~~ each license classification;
- (4) Annual Continuing Education Information Booklet; and
- ~~(5) — (4) The National Electrical Code, NFPA 70, at the current price. ~~and~~~~
- ~~(5) — The North Carolina Building Code, Volume IV Electrical, at the current price.~~

Statutory Authority G.S. 87-42; 150B-11.

SECTION .1100 - CONTINUING EDUCATION

**.1103 MINIMUM REQUIREMENTS FOR COURSE INSTRUCTOR APPROVAL**

(a) Each course instructor shall submit an application for continuing education course instructor approval to the Board on a form provided by the Board by March 1 of the year prior to the license period (July 1 - June 30) in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the instructor;
- (2) Instructor's address and telephone number;
- (3) The name of the course sponsor;
- (4) Course title;
- (5) Course contact hours; and
- (6) Qualifications of instructor.

~~(b) To qualify as an approved continuing education course instructor:~~

- ~~(1) The instructor shall have professional or trade experience evidenced by an appropriate license, certification or degree; or~~
- ~~(2) The instructor shall have other recognized expertise in the electrical industry.~~

(b) Beginning March 1, 1994, no applicant shall be considered for approval as a continuing education course instructor unless the applicant satisfies at least one of the following:

- (1) Be a "qualified individual" as defined in G.S. 87-41.1(1) and certified as such by the Board pursuant to G.S. 87-42. This applicant will be considered for approval as a continuing education instructor to teach courses in the same or lower license classification in which the applicant is certified as a "qualified individual" as follows:

Unlimited - Any License Classification

Intermediate - Intermediate, Limited, SP-SFD and any SP-Restricted Classification

Limited - Limited, SP-SFD and any SP-Restricted Classification

SP-Restricted - Only in same SP-Restricted Classification

- (2) Have passed the Continuing Education Instructor Examination prescribed and conducted by the Board. This applicant will be considered for approval as a continuing education instructor to teach courses in any license classification.
- (3) Be a "qualified code-enforcement official" as defined in G.S. 143-151.8(a)(5) and certified as such by the North Carolina Code Officials Qualification Board as holding qualifications for an electrical inspector in Standard Level III, Standard Level II or Standard Level I categories. This applicant will be considered for approval as a continuing education instructor to teach courses in license classifications as follows:

Standard Level III - Any License Classification

Standard Level II- Intermediate, Limited, SP-SFD and any SP-Restricted Classification

Standard Level I - Limited, SP-SFD and any SP-Restricted Classification.

- (4) Be found by the Board to have professional or trade experience or other special qualifications qualifying him to teach courses in the license classification or classifications determined by the Board.

(c) The Board may deny an application if it finds that the applicant has failed to comply with the terms of any agreement as provided in Paragraph (g) of this Rule or the rules of the Board.

(d) ~~(e)~~ The course instructor application shall be submitted together with the application for continuing education course sponsor approval as prescribed in Rule .1102 of this Section.

~~(e)~~ ~~(d)~~ The Board shall approve or deny applications at its April meeting.

~~(f)~~ ~~(e)~~ Appeals from denials shall be heard by the Board at a scheduled meeting in May.

~~(g)~~ ~~(f)~~ Upon approval of the application, each approved instructor shall agree to conduct courses in accordance with this Section and shall indicate his agreement by signing a continuing education instructor agreement form provided by the Board.

Statutory Authority G.S. 87-42; 87-44.1.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board for Licensing of Geologists intends to amend rule cited as 21 NCAC 21 .0107.*

*The proposed effective date of this action is April 1, 1993.*

*The public hearing will be conducted at 2:00 p.m. on December 18, 1992 at 3733 Benson Drive, Raleigh, NC 27609.*

*Reason for Proposed Actions: Raise examination fee to more closely reflect overall costs.*

*Comment Procedures: By correspondence to North Carolina Board for Licensing of Geologists, P.O. Box 27402, Raleigh, NC 27611 or in person at 3722 Benson Drive, Raleigh, NC 27609.*

## CHAPTER 21 - BOARD OF GEOLOGISTS

### SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROCEDURES

#### **.0107 FEES**

(a) Completed application forms must be accompanied by the prescribed fee. Application fees will not be refunded regardless of Board approval or disapproval of the application. Prescribed fees shall be:

- |      |   |                            |
|------|---|----------------------------|
| (1)  | application forms for licensing as a geologist, including a copy of the Geologists Licensing Act and Rules: . . . . . | \$ 5.00                    |
| (2)  | application for license: . . . . .  | \$ 50.00                   |
| (3)  | examination: . . . . .  | \$ <del>50.00</del> 100.00 |
| (4)  | application for license by comity: . . . . .  | \$ 50.00                   |
| (5)  | biennial renewal of license: . . . . .  | \$ 70.00                   |
| (6)  | biennial renewal of license of N. C. resident geologists practicing less than 15 days per year: . . . . .             | \$ 30.00                   |
| (7)  | replacement of license: . . . . .   | \$ 10.00                   |
| (8)  | application for reinstatement of license: . . . . .   | \$ 50.00                   |
| (9)  | licensed geologist stamp and seal: cost plus . . . . .  | \$ 5.00                    |
| (10) | application for corporate registration: . . . . .   | \$ 50.00                   |
| (11) | annual renewal of certificate of registration for corporations . . . . .  | \$ 25.00                   |
| (12) | registered geological corporation stamp and seal: cost plus: . . . . .  | \$ 5.00                    |

(b) All licenses will expire biennially on July 1. Biennial renewal fees received after July 1 and before September 1 of the year due shall be subject to the assessment of a late payment penalty of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00). All certificates of registration for corporations will expire annually on July 1. Annual renewal fees for certificates of registration for corporations received after August 1 and before December 31 shall be subject to a late payment penalty of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00).

(c) Licenses that have not been renewed by September 1st may only be renewed by filing a reinstatement application and submitting a reinstatement fee.

(d) Licenses that have been suspended under G.S. 89E-19 may be reinstated by filing a reinstatement application and paying the reinstatement fee.

*Statutory Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E-13; 89E-19.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Opticians intends to adopt rule cited as 21 NCAC 40 .0214.*

*The proposed effective date of this action is March 1, 1993.*

*The public hearing will be conducted at 9:00 a.m. on January 15, 1993 at 412 N. Wilmington St., Raleigh, NC 27601.*

*Reason for Proposed Action: Board needs codified, due-process procedures for handling complaints against licensees and applicants for licenses.*

*Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing or in writing prior to the hearing by mail or hand delivery addressed to Mr. Willard V. Barnes, Administrative Director, NC State Board of Opticians, 412 North Wilmington Street, Raleigh, NC 27601.*

## CHAPTER 40 - BOARD OF OPTICIANS

### SECTION .0200 - CONDUCT OF REGISTRANTS

#### .0214 COMPLAINTS; PRELIMINARY DETERMINATIONS

(a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.

(b) A complaint shall be handled initially by the Board's Administrative Director or his staff designee, who may dismiss it as unfounded, frivolous or trivial.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Administrative Director or his staff designee shall notify the accused of the complaint in writing. Such notice shall be sent by certified mail, return receipt

requested; shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit an answer in writing within 20 days from the date the notice of the complaint is received by the accused.

(d) If the accused admits to the charges, and if, in the opinion of the Administrative Director or his staff designee, the charges do not merit review by the Board's disciplinary committee, the Administrative Director or his staff designee shall accept the accused's admission of guilt and shall issue a letter of caution or reprimand on behalf of the Board. The letter shall include an order to the accused to refrain from violating G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code in the future.

(e) If the accused admits to the charges, and if, in the opinion of the Administrative Director or his staff designee, the charges merit review by the Board's disciplinary committee, the Administrative Director or his staff designee shall refer the complaint to the committee. After reviewing the charges, the committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions listed in Paragraph (h) of this Rule should be taken.

(f) If the accused does not respond to or denies the charges, the Board's Administrative Director or his staff designee shall investigate the allegations contained in the complaint, and the Administrative Director or his staff designee may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, evidence and investigative findings to the Board's disciplinary committee for review. From such review, the committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions listed in Paragraph (h) of this Rule should be taken.

(g) The complaint, evidence, investigative findings and disposition of each case shall be placed in a permanent file of the accused. When a second complaint is filed against the accused during a period of 12 months, or a third complaint is filed against the accused during any period of time, the Administrative Director or his staff designee shall present the accused's file to the disciplinary committee for a review. From such review, the committee shall make a preliminary determination of the new complaint and recommend to the Board which of the actions listed in Paragraph (h) of this Rule should be taken.

(h) In accordance with Paragraphs (e) through (g) of this Rule, the disciplinary committee shall

receive and review the complaint and the accused's file, if applicable, shall make a preliminary determination, and shall recommend to the Board that one of the following actions be taken:

- (1) the charges be dismissed as unfounded, frivolous or trivial;
- (2) a letter of caution be issued to the accused by the Board;
- (3) in a case of admission of guilt, a letter of reprimand be issued to the accused by the Board; or
- (4) the case be presented to the Board, excluding board members who participated in the preliminary determination, for a contested case hearing, to be conducted in accordance with G.S. 90-249 and G.S. 150B, Article 3A, and the rules of the Board.

*Statutory Authority G.S. 90-239; 90-249.*

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

## ADMINISTRATION

### Motor Fleet Management Division

1 NCAC 38 .0205 - Accident Reporting  
Agency Revised Rule

RRC Objection 09/17/92  
Obj. Removed 10/15/92

## AGRICULTURE

### Structural Pest Control Division

2 NCAC 34 .0406 - Spill Control  
Agency Responded  
Agency Revised Rule

RRC Objection 07/16/92  
No Action 08/20/92  
Obj. Removed 10/15/92

2 NCAC 34 .0603 - Waivers  
Agency Responded  
Agency Revised Rule

RRC Objection 07/16/92  
No Action 08/20/92  
Obj. Removed 10/15/92

2 NCAC 34 .0902 - Financial Responsibility  
Agency Responded  
Agency Revised Rule

RRC Objection 07/16/92  
No Action 08/20/92  
Obj. Removed 10/15/92

## ECONOMIC AND COMMUNITY DEVELOPMENT

### Community Assistance

4 NCAC 19S .0101 - Overview and Purpose  
4 NCAC 19S .0102 - Definition  
4 NCAC 19S .0103 - Waiver  
4 NCAC 19S .0202 - Prohibited Costs  
4 NCAC 19S .0401 - Distribution of Funds  
4 NCAC 19S .1101 - Grant Agreement  
Agency Revised Rule

RRC Objection 10/15/92  
RRC Objection 10/15/92  
RRC Objection 10/15/92  
RRC Objection 10/15/92  
RRC Objection 10/15/92  
RRC Objection 10/15/92  
Obj. Removed 10/15/92

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Departmental Rules

15A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts  
15A NCAC 1J .0302 - General Provisions  
15A NCAC 1J .0701 - Public Necessity: Health, Safety and Welfare

RRC Objection 06/18/92  
RRC Objection 06/18/92  
RRC Objection 06/18/92

### Environmental Management

15A NCAC 2H .0801 - Purpose  
Agency Revised Rule  
15A NCAC 2H .0803 - Definitions  
Agency Revised Rule

RRC Objection 10/15/92  
Obj. Removed 10/15/92  
RRC Objection 10/15/92  
Obj. Removed 10/15/92

15A NCAC 2H .0805 - Certification and Renewal of Certification Agency Revised Rule	RRC Objection 10/15/92
15A NCAC 2L .0107 - Compliance Boundary Agency Revised Rule	RRC Objection 10/15/92
15A NCAC 2O .0302 - Self Insurance	Obj. Removed 10/15/92
	RRC Objection 06/18/92

**Wildlife Resources and Water Safety**

15A NCAC 10I .0001 - Definitions	RRC Objection 10/15/92
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**HUMAN RESOURCES****Facility Services**

10 NCAC 3R .3001 - Certificate of Need Review Categories Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92

**Individual and Family Support**

10 NCAC 42C .3601 - Administrative Penalty Determination Process Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92
10 NCAC 42T .0001 - Definitions	RRC Objection 10/15/92
10 NCAC 42T .0006 - Service Delivery Agency Revised Rule	RRC Objection 10/15/92
	RRC Objection 10/15/92

**Mental Health: General**

10 NCAC 14C .1115 - Funding Group Homes for Mentally Retarded Adults Agency Revised Rule	RRC Objection 08/20/92
	Obj. Removed 10/15/92
10 NCAC 14K .0216 - Waiver of Licensure Rules Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92
10 NCAC 14T .0101 - Scope Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92
10 NCAC 14T .0103 - Advance Care Directives Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92

**Mental Health: Other Programs**

10 NCAC 18D .0117 - Purpose and Scope Agency Revised Rule	RRC Objection 10/15/92
	Obj. Removed 10/15/92

**INDEPENDENT AGENCIES****N.C. Housing Finance Agency**

24 NCAC 1M .0202 - Eligibility	RRC Objection 10/15/92
24 NCAC 1M .0204 - Selection Procedures	RRC Objection 10/15/92
24 NCAC 1M .0205 - Administration	RRC Objection 10/15/92
24 NCAC 1M .0206 - Program Fees	RRC Objection 10/15/92
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection 10/15/92
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection 10/15/92
24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection 10/15/92
24 NCAC 1M .0306 - Funding Commitment	RRC Objection 10/15/92
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection 10/15/92
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection 10/15/92



24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
24 NCAC 1O .0101 - Purpose	RRC Objection	10/15/92
24 NCAC 1O .0102 - Eligibility	RRC Objection	10/15/92
24 NCAC 1O .0201 - Application Procedures	RRC Objection	10/15/92
24 NCAC 1O .0202 - Selection Procedures	RRC Objection	10/15/92
24 NCAC 1O .0203 - Administration	RRC Objection	10/15/92

## **INSURANCE**

### **Multiple Employer Welfare Arrangements**

11 NCAC 18 .0019 - Description of Forms	RRC Objection	06/18/92
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### **Seniors' Health Insurance Information Program**

11 NCAC 17 .0005 - SHIP Inquiries to Insurers and Agents	RRC Objection	06/18/92
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## **JUSTICE**

### **General Statutes Commission**

12 NCAC 8 .0506 - Declaratory Rulings	RRC Objection	10/15/92
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## **LABOR**

### **Occupational Safety and Health Act**

13 NCAC 7C .0108 - Building Code	RRC Objection	09/17/92
Rule Returned to Agency		10/15/92
Agency Filed Rule with OAH		Eff. 10/22/92
13 NCAC 7C .0109 - Fire Prevention Code	RRC Objection	09/17/92
Rule Returned to Agency		10/15/92
Agency Filed Rule with OAH		Eff. 10/22/92

## **LICENSING BOARDS AND COMMISSIONS**

### **Professional Engineers and Land Surveyors**

21 NCAC 56 .0501 - Requirement for Licensing	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .0502 - Application Procedure: Individual	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .0701 - Rules of Professional Conduct	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1603 - Classification of Surveys	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1604 - Mapping Requirements	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1605 - Classification of Topographic Surveys	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92

## **REVENUE**

**Individual Income, Inheritance and Gift Tax Division***17 NCAC 3B .0401 - Penalties**RRC Objection 08/20/92**17 NCAC 3B .0402 - Interest**RRC Objection 08/20/92***Individual Income Tax Division***17 NCAC 6B .0107 - Extensions**RRC Objection 08/20/92**17 NCAC 6B .0115 - Additions to Federal Taxable Income**RRC Objection 08/20/92**17 NCAC 6B .0116 - Deductions from Federal Taxable Income**RRC Objection 08/20/92**17 NCAC 6B .0117 - Transitional Adjustments**RRC Objection 08/20/92**17 NCAC 6B .3406 - Refunds**RRC Objection 08/20/92***TRANSPORTATION****Division of Highways***19A NCAC 2B .0164 - Use of Right of Way Consultants**RRC Objection 09/17/92**Agency Revised Rule**Obj. Removed 10/15/92**19A NCAC 2B .0165 - Asbestos Contracts with Private Firms**RRC Objection 08/20/92**Agency Revised Rule**Obj. Removed 10/15/92*

***This*** Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

**1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

**15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV**

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Anne R. Gwaltney, Milton H. Askew, Jr. and Anna L. Askew v. EHR and Pamlico County Health Department	89 DHR 0699	Reilly	07/17/92
Eleanor R. Edgerton-Taylor v. Cumberland County Department of Social Services	89 OSP 1141	Morrison	08/18/92
Annette Carlton v. Cleveland County Department of Social Services	90 OSP 0024	Chess	08/14/92
Janice Parker Haughton v. Halifax County Mental Health, Mental Retardation, Substance Abuse Program	90 OSP 0221	West	08/18/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Sarah P. Wilder v. N.C. State University	90 OSP 0268	Reilly	11/03/92
Carolina Water Service, Inc. v. EHR, Division of Environmental Management	90 EHR 0415	West	09/11/92
CSX Transportation, Inc. v. Department of Environment, Health, & Natural Resources	90 EHR 0628	Reilly	07/17/92
Bruce Keeter v. Beaufort County Health Department	90 EHR 0666	Morgan	07/28/92
R. Anthony White v. Department of Human Resources	90 CSE 0756	Morgan	10/05/92
Christine Hill v. Crime Victims Compensation Commission	90 CPS 0876	Morgan	08/24/92
Tommy D. Hunt v. Department of Correction	90 OSP 1011	Morgan	10/05/92
Cherokee Resources, Inc. v. EHR, Division of Environmental Management	90 EHR 1075	West	10/19/92
Leslie W. Hall v. EHR, Division of Marine Fisheries	90 EHR 1397	Gray	10/13/92
JHY Concord, Inc. v. Department of Labor	90 DOL 1421	Morgan	07/28/92
Lick Fork Hills, Inc., Marion Bagwell, President v. Department of Environment, Health, & Natural Resources	91 EHR 0023	Morgan	07/28/92
Albert J. Johnson v. N.C. Victims Compensation Commission	91 CPS 0038	Morgan	07/28/92
Frank Beal, T/A Wild Wild West v. Alcoholic Beverage Control Commission	91 ABC 0164	Morgan	09/10/92
William B. Holden v. Department of Environment, Health, & Natural Resources	91 EHR 0176	Morgan	08/18/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Brenda P. Price v. North Carolina Central University	91 OSP 0219	Morrison	08/21/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0257	West	06/30/92
Kenneth E. Fletcher v. University of North Carolina at Greensboro	91 OSP 0315	Chess	09/15/92
Richard L. Gainey v. Department of Justice	91 OSP 0341	Becton	08/10/92
Wade Charles Brown, Jr. v. N.C. Crime Victims Compensation Commission	91 CPS 0345	Chess	07/08/92
Jackie Bruce Edwards v. DHR, Western Carolina Center	91 OSP 0354	West	08/20/92
Central Transport, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0402	Morrison	09/25/92
Robert C. Howell v. Department of Correction	91 OSP 0407	Morgan	08/26/92
Harvey Fertilizer and Gas Company v. EHR, Division of Environmental Management	91 EHR 0446	Morgan	10/01/92
Charles E. Roe v. Department of Environment, Health, & Natural Resources	91 OSP 0520	Nesnow	07/23/92
Jerry J. Parker v. Department of Correction	91 OSP 0546	Morgan	08/26/92
Deborah Binkley v. Crime Victims Compensation Commission	91 CPS 0561	Morgan	10/02/92
Air-A-Plane Corporation v. Department of Environment, Health, & Natural Resources	91 EHR 0636	Nesnow	09/04/92
Lisa M. Reichstein v. Office of Student Financial Aid, East Carolina University	91 OSP 0662	Nesnow	06/24/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	91 DHR 0665	Chess	09/09/92
Bobby R. Graham v. DHR, Caswell Center	91 OSP 0695	Nesnow	09/21/92
DHR, Division of Facility Svcs, Child Day Care Section v. Mary Goodwin, Jean Dodd, D/B/A Capital City Day Care Center	91 DHR 0720	Morgan	07/30/92
Kenneth Helms v. Department of Human Resources	91 OSP 0729	Chess	07/15/92
Lloyd C. Neely v. Department of Correction	91 OSP 0756	Morgan	09/10/92
Alcoholic Beverage Control Commission v. Daniels Investments, Inc., t/a Leather & Lace - East 4205 Monroe Road, Charlotte, N.C. 28205	91 ABC 0799	Mann	07/14/92
Zelma Babson v. Brunswick County Health Department	91 OSP 0804	Gray	08/14/92
ACT-UP Triangle (AIDS Coalition to Unleash Power Triangle, Steven Harris, and John Doe v. Commission for Health Services of the State of N.C., Ron Levine, as Assistant Secretary of Health and State Health Director for EHR of the State of N.C., William Cobey, as Secretary of EHR of the State of N.C., Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the N.C. EHR, Wayne Bobbitt, Jr., as Chief of the HIV/STD Control Branch of the N.C.EHR	91 EHR 0818	Becton	07/08/92
Jane C. O'Malley, Melvin L. Cartwright v. EHR and District Health Department Pasquotank- Perquimans-Camden-Chowan	91 EHR 0838	Becton	07/02/92
Cheryl Veronica McNeal v. Criminal Justice Education & Training Stds Comm	91 DOJ 0861	Morgan	09/22/92
Thomas E. Vass v. James E. Long, Department of Insurance	91 INS 0876	Morrison	08/14/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	08/28/92
Olde Towne Partnership and Tryon Realty Co. v. EHR, Division of Coastal Management	91 EHR 0909	Morrison	09/16/92
Gerald R. Pruitt v. Department of Correction	91 OSP 0933	Gray	09/14/92
Jones Grading & Fencing, Inc. v. EHR, Solid Waste Management	91 EHR 0956 91 EHR 0324	Nesnow	09/28/92
Grotgen Nursing Home, Inc., Britthaven, Inc. v. Certificate of Need Section, Div of Facility Sves, DHR	91 DHR 0964 91 DHR 0966	Nesnow	07/06/92
Ralph E. Brown v. Carla O'Konek, Department of Correction	91 OSP 0970	Morgan	10/07/92
Anthony J. Carter v. DHR, Division of Social Services, CSE	91 CSE 0975	Nesnow	09/17/92
Ramona S. Smith, R.N. v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 DST 0984	Chess	06/18/92
Jarrett Dennis Swearingin v. DHR, Division of Social Services, CSE	91 CSE 0986	Becton	09/14/92
Charles H. Yates, Power of Attorney for Ruth Yates v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 INS 1008	Reilly	08/21/92
John McMillan v. DHR, Division of Social Services, CSE	91 CSE 1009	Reilly	10/01/92
Walter McGlone v. DHR, Division of Social Services, CSE	91 CSE 1030	Morrison	07/13/92
William Oscar Smith v. DHR, Division of Social Services, CSE	91 CSE 1042	Gray	07/24/92
William Watson v. DHR, Division of Social Services, CSE	91 CSE 1047	Becton	07/08/92



**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Robert D. Daniels Jr. v. DHR, Division of Social Services, CSE	91 CSE 1048	Morrison	08/27/92
Joseph L. Wilmer v. DHR, Division of Social Services, CSE	91 CSE 1049	Becton	10/20/92
Marie McNeill-Pridgen v. Department of Environment, Health, & Natural Resources	91 EHR 1059	Nesnow	07/17/92
Catawba Memorial Hospital v. DHR, Div of Facility Sves, Certificate of Need Section and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. and Thoms Rehabilitation Hospital Health Services Corp. and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. v. DHR, Div of Facility Sves, Certificate of Need Section and Thoms Rehabilitation Hospital Health Services Corp. and Catawba Memorial Hospital	91 DHR 1061          91 DHR 1087	Reilly	07/13/92
Edward R. Peele v. Sheriffs' Education & Training Stds. Commission	91 DOJ 1092	Morrison	08/18/92
Willie Turner v. DHR, Division of Social Services, CSE	91 CSE 1096	Morrison	10/23/92
Charles Lawton Roberts v. DHR, Division of Social Services, CSE	91 CSE 1097	Becton	09/14/92
William Torres v. Dept of Justice, Lacy H. Thornburg, Attorney General	91 DOJ 1098	Morrison	08/07/92
Wade A. Burgess v. DHR, Division of Social Services, CSE	91 CSE 1114	Gray	07/01/92
Devoux A. Olliver v. Department of Human Resources, O'Berry Center	91 OSP 1151	Gray	09/30/92
Sammie L. Anderson v. DHR, Division of Social Services, CSE	91 CSE 1155	Mann	09/01/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Harry L. King v. Department of Transportation	91 OSP 1162	Morgan	07/13/92
Bobby M. Siler v. DHR, Division of Social Services, CSE	91 CSE 1169	Morrison	10/12/92
Gilbert Lockhart v. DHR, Division of Social Services, CSE	91 CSE 1178	Morrison	07/30/92
Isaac H. Galloway v. DHR, Division of Social Services, CSE	91 CSE 1190	Reilly	06/30/92
Russell A. Barclift v. DHR, Division of Social Services, CSE	91 CSE 1207 92 CSE 0275	Reilly	06/30/92
Barnabas D. Frederick v. DHR, Division of Social Services, CSE	91 CSE 1216	Nesnow	09/15/92
Herman Edward Main II v. DHR, Division of Social Services, CSE	91 CSE 1225	Nesnow	07/07/92
Albert Louis Stoner III v. DHR, Division of Social Services, CSE	91 CSE 1244	Gray	07/01/92
James E. Greene v. DHR, Division of Social Services, CSE	91 CSE 1245	Nesnow	07/14/92
Joseph W. Harris v. DHR, Division of Social Services, CSE	91 CSE 1247	Morgan	07/28/92
Celvis M. Burns v. DHR, Division of Social Services, CSE	91 CSE 1256	Mann	09/01/92
Rodney Powell v. DHR, Division of Social Services, CSE	91 CSE 1257	Morgan	07/29/92
Miles G. Griffin Jr. v. DHR, Division of Social Services, CSE	91 CSE 1270	Gray	08/27/92
Gerald E. Anthony v. DHR, Division of Social Services, CSE	91 CSE 1274	Mann	09/01/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Floyd L. Rountree v. DHR, Division of Social Services, CSE	91 CSE 1275	Morgan	07/22/92
Ruth Smith Hensley Shondales v. ABC Commission	91 ABC 1280	Chess	08/05/92
William James Terry v. Victims Compensation Commission	91 CPS 1302	Morrison	10/02/92
Rasoul Behboudi v. DHR, Division of Social Services, CSE	91 CSE 1313	Morrison	09/15/92
John D. Gaines v. DHR, Division of Social Services, CSE	91 CSE 1321	Chess	10/05/92
City-Wide Asphalt Paving, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1360	Chess	07/01/92
Alcoholic Beverage Control Commission v. Tre Three, Inc., T/A Crackers, Airport Rd., Rockingham, NC 28379	91 ABC 1372	Chess	07/07/92
Alcoholic Beverage Control Commission v. Rode Enterprises, Inc., T/A Jordan Dam Mini Mart	91 ABC 1388	Gray	07/30/92
Carol J. Brown-L 238-96-9304 for Joel A. Brown-M 350-70-9378 v. DHR, Division of Social Services, CSE	91 DHR 1397	Morrison	10/29/92
Carlton M. Smith v. Department of Human Resources	91 OSP 1419	Reilly	11/05/92
Blythe M. Bragg v. University of North Carolina at Chapel Hill	91 OSP 1421	Nesnow	09/08/92
David W. Williams v. DHR, Division of Social Services, CSE	91 CSE 1423	Morrison	09/10/92
Donald R. Allison v. DHR, Caswell Center	91 OSP 1427	Reilly	06/30/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Alfred Rees v. Department of Environment, Health, & Natural Resources	92 EHR 0004	Reilly	09/03/92
Mrs. S. v. Washington County Board of Education	92 EDC 0023	Mann	08/28/92
Rudolph Tripp v. Department of Correction	92 OSP 0024	Gray	08/27/92
Gonzalo Rodriquez T/A Gonzalo's Baile Mexicano 227 S. Scales Street, Reidsville, NC 27323 v. Alcoholic Beverage Control Commission	92 ABC 0026	Chess	10/01/92
Lavern Fesperman v. Mecklenburg County	92 OSP 0030	Chess	07/17/92
Vale B. Sims v. Winston-Salem State University	92 OSP 0031	Gray	10/13/92
Paul J. Nonkes v. Halifax County Health Dept. (Jeff Dillard, Sanitarian)	92 EHR 0058	Becton	08/28/92
Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	92 DHR 0071	Becton	08/19/92
Ron C. W. Spencer v. Criminal Justice Education & Training Stds Commission	92 DOJ 0076	Morgan	11/05/92
Mattie S. Bryant v. Department of Transportation	92 OSP 0081	Reilly	10/07/92
Fred Jennings Moody Jr. v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0084	Chess	07/17/92
Ronnie Lamont Donaldson v. Sheriffs' Education & Training Standards Commission	92 DOJ 0092	Reilly	07/27/92
Vernice V. Battle v. Sheriffs' Education & Training Standards Commission	92 DOJ 0093	Becton	08/28/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0100	Chess	09/04/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Marvin Helton, Jean Helton v. DHR, Division of Facility Services	92 DHR 0102	Chess	08/14/92
Leo Scott Wilson v. Department of Environment, Health, & Natural Resources	92 EHR 0112	Reilly	08/26/92
Ray Charles Ramsey D/B/A Triples Night Club v. Alcoholic Beverage Control Commission	92 ABC 0116 92 ABC 0360	West	10/12/92
Peggy N. Barber v. The University of North Carolina at Chapel Hill	92 OSP 0120	Reilly	07/13/92
Luther Dawson Jr. v. DHR, Division of Facility Services	92 DHR 0121	Nesnow	10/09/92
Rodney A. Cranfill v. Dept of Labor, Division of Occupational Safety & Health	92 DOL 0122	Nesnow	10/22/92
Robert C. Thomas v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0130	Chess	10/02/92
Alcoholic Beverage Control Commission v. John Wade Lewis, t/a Tasty Grill	92 ABC 0145	Nesnow	07/15/92
Licensing Board for General Contractors v. Wright's Construction, Inc. (Lic. No. 23065)	92 LBC 0172	Gray	07/31/92
Richard L. Banks v. Pasquotank-Perquimans-Camden-Chowan District Health Department (PPCC) & Department of Environment, Health, & Natural Resources	92 EHR 0175	West	08/25/92
America's Management Group, Inc. d/b/a America's Health Care of Nashville v. DHR, Division of Facility Services, Licensure Section	92 DHR 0183	West	10/06/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0186	Chess	09/04/92
Ray Bryant v. Department of Labor, OSHA	92 DOL 0187	Nesnow	08/07/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Herbert Hines Jr., H & H v. Alcoholic Beverage Control Commission	92 ABC 0189	Becton	07/22/92
William Stevenson v. Department of Correction	92 OSP 0201	Chess	09/03/92
Frances B. Billingsley v. Bd. of Trustees Teachers & St Employees Retirement Sys	92 DST 0205	Morgan	08/18/92
Glenn E. Myers v. Department of Correction	92 OSP 0217	Reilly	09/14/92
Lawrence Neal Murrill T/A Knox, 507 1st St SW, Hickory, NC 28602 v. Alcoholic Beverage Control Commission	92 ABC 0220	Chess	08/03/92
William Oats v. Elizabeth City State University	92 OSP 0226	Nesnow	10/09/92
Town of Denton v. Department of Environment, Health, & Natural Resources	92 EHR 0241	Reilly	07/30/92
Alcoholic Beverage Control Commission v. Byrum's of Park Road, Inc., T/A Byrum's Restaurant	92 ABC 0252	Gray	07/30/92
Alcoholic Beverage Control Commission v. Leo's Delicatessen #2, Inc., T/A Leo's #2	92 ABC 0255	Gray	07/30/92
North Topsail Water & Sewer, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0266	Morrison	08/12/92
Raymond O. and Rita Halle, and the Town of Boone v. EHR, Division of Land Resources	92 EHR 0267 92 EHR 0376	Gray	09/18/92
James L. Stubbs v. Department of Correction	92 OSP 0282	Chess	10/02/92
Henry Thomas Tart v. DHR, Division of Social Services, CSE	92 CSE 0283	Nesnow	09/15/92
Virginia Devenny v. The University of North Carolina at Charlotte	92 OSP 0301	Reilly	09/22/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Friends of Hatteras Island National Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Commission of the State of NC and Cape Hatteras Water Association, Inc.	92 EHR 0303	West	10/19/92
Henry Lane, D/B/A Emerald Health Care Acute Care Ctr v. DHR, Div of Facility Services, Certificate of Need Section and Bowman-Richardson Health Care, Inc. D/B/A Wilkes Senior Village	92 DHR 0308	Gray	08/28/92
Azmi Sider, Midtown Mini Mart v. EHR, Division of Maternal and Child Health, WIC Section	92 EHR 0317	Nesnow	09/16/92
Gerald G. Strickland v. Crime Control and Public Safety	92 CPS 0320	Chess	09/10/92
Charles Wesley McAdams v. Division of Motor Vehicles	92 OSP 0332	Gray	10/13/92
Jonathan L. Fann v. U.N.C. Physical Plant, Herb Paul, Louis Herndon, Dean Justice, Bruce Jones	92 OSP 0363	Becton	08/19/92
Douglas A. Bordeaux v. Department of Correction	92 OSP 0378	Chess	07/10/92
Clifton R. Johnson v. O'Berry Center, Department of Human Resources	92 OSP 0381	West	07/08/92
Southeastern Machine & Tool Company, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0386	Becton	07/20/92
Louvenia Clark v. Edgecombe County Department of Social Services	92 OSP 0402	Reilly	08/21/92
Raleigh F. LaRoche v. Child & Family Services of Wake County	92 OSP 0409	Becton	08/24/92
Matthew R. Anderson v. DHR, Division of Social Services, CSE	92 CSE 0418	Gray	10/06/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Ellwin C. Wetherington Jr. v. DHR, Division of Social Services, CSE	92 CSE 0419	Morrison	09/28/92
Paul Reeves, Youth University Child Care v. Child Day Care Section, Division of Facility Svcs	92 DHR 0424	West	08/21/92
Mr. & Mrs. James C. Stanton v. Charlotte-Mecklenburg School System	92 EDC 0430	Nesnow	08/04/92
James Cooper Lewis v. Sheriffs' Education & Training Standards Commission	92 DOJ 0461	Reilly	09/15/92
Virgil Blaine Poole v. Department of Correction	92 OSP 0463	Reilly	11/03/92
Alcoholic Beverage Control Commission v. Roy William Teague, T/A Jamie's	92 ABC 0474	Reilly	10/15/92
Alcoholic Beverage Control Commission v. 508 Investors, Inc., t/a Johnathon's Restaurant	92 ABC 0476	Nesnow	09/24/92
Jon David Amundson v. Davidson County Mental Health	92 OSP 0503	Becton	09/10/92
Northview Mobile Home Park v. Department of Environment, Health, & Natural Resources	92 EHR 0507	Reilly	07/13/92
Nathan R. Harris v. DHR, Division of Social Services, CSE	92 CSE 0512	West	11/12/92
Yolanda Lynn Bethea v. DHR, Division of Social Services, CSE	92 DCS 0513	Becton	08/14/92
Frank Humphrey v. EHR, Division of Environmental Management	92 EHR 0514	Morrison	10/08/92
Alice Hunt Davis v. Department of Human Resources	92 OSP 0526	West	07/16/92
Jimmy F. Bailey Sr. v. Department of State Treasurer, Retirement Systems Div	92 DST 0536	Morgan	08/18/92



**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Alcoholic Beverage Control Commission v. Partnership (Rollo Corrothers) t/a Corrothers Community Center and Private Club	92 ABC 0539	Mann	10/19/92
James R. Coley Sr. v. Department of Crime Control & Public Safety	92 CPS 0551	Morgan	10/28/92
Bramar, Inc., t/a Spike's v. Alcoholic Beverage Control Commission	92 ABC 0554	Mann	08/13/92
Grady Lockhart Jr. v. DHR, Division of Social Services, CSE	92 CSE 0565	Becton	09/28/92
Ralph J. Ogburn v. Private Protective Services Board	92 DOJ 0571	Nesnow	08/07/92
Clemon Evans, Glamor Inn v. Alcoholic Beverage Control Commission	92 ABC 0574	West	11/10/92
George M. Hagans v. DHR, (Cherry Hospital)	92 OSP 0583	Morgan	09/21/92
Gilbert Todd Sr. v. Public Water Supply Section	92 EHR 0586	Morrison	08/06/92
Candance Y. Johnson v. Division of Motor Vehicles	92 DOT 0589	Becton	08/24/92
John W. Surles v. N.C. Crime Victims Compensation Commission	92 CPS 0595	Reilly	07/13/92
Michelle Umstead v. Crime Victims Compensation Commission	92 CPS 0599	Morrison	10/26/92
Alcoholic Beverage Control Commission v. Teresa Henderson Burnett T/A Tiffany's Lounge	92 ABC 0611	Gray	11/05/92
Alcoholic Beverage Control Commission v. Richard Henry Bradley T/A Nite Lite	92 ABC 0613	Gray	10/30/92
Pamela Jean Gass v. DHR, Division of Social Services, CSE	92 DCS 0623	Morrison	08/14/92

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
J.W. Reed v. Department of Correction	92 OSP 0638	Morrison	08/11/92
Debra G. Conner v. Caswell Center, Department of Human Resources	92 OSP 0647	Morgan	10/28/92
Carson Davis v. Department of Correction	92 OSP 0650	Reilly	08/10/92
Kevin Stringer v. DHR, Division of Social Services, CSE	92 CSE 0651	Gray	10/23/92
Luther Hall Clontz v. Western Carolina Center (NC of Human Resources)	92 OSP 0652	Becton	09/10/92
Private Protective Services Board v. Mark Andrew Perry	92 DOJ 0662	Becton	09/10/92
Stauffer Information Systems v. Department of Community Colleges and the N.C. Department of Administration and The University of Southern California	92 DOA 0666	West	07/08/92
Dortheia B. Marley v. Department of Correction	92 OSP 0667	West	09/28/92
Nancy J. Tice v. Administrative Off of the Courts, Guardian Ad Litem Svcs	92 OSP 0674	Morrison	08/11/92
L. Stan Bailey v. Chancellor Moran and UNC-Greensboro	92 OSP 0679	West	07/10/92
Arnold McCloud T/A Club Castle v. Alcoholic Beverage Control Commission	92 ABC 0681	Morrison	07/25/92
Alcoholic Beverage Control Commission v. Alfonzo Damon T/A The New Zanza Bar	92 ABC 0690	Gray	10/30/92
Alcoholic Beverage Control Commission v. Nina Katheryn Delk, T/A Nina's Billiards	92 ABC 0704	Gray	11/10/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Joyce Faircloth, T/A Showcase Lounge v. Alcoholic Beverage Control Commission	92 ABC 0713	Morrison	07/25/92
James B. Price v. Department of Transportation	92 OSP 0725	Mann	09/02/92
Dianne G. Brawley v. Sheriffs' Education & Training Standards Commission	92 DOJ 0729	Gray	11/05/92
Edmonia Lang v. Carteret County Board of Education	92 OSP 0736	Mann	08/28/92
Beatrice Wheless v. Lise M. Miller, University Payroll Off, NC St University	92 OSP 0744	Morgan	11/05/92
Larry Bruce High v. Alarms Systems Licensing Board	92 DOJ 0755 92 DOJ 0785	Nesnow	08/25/92
Ezra Meir v. EHR, Division of Environmental Management	92 EHR 0764	Morgan	11/12/92
Wyoming Gilliam v. DHR, Division of Social Services, CSE	92 CSE 0772	Gray	09/29/92
Wilma P. Howard v. Bd of Trustees of the Teachers' & St Emp Retirement Sys	92 DST 0787	Becton	11/09/92
Timothy Wylie v. Department of State Treasurer, Retirement Systems Div	92 DST 0793	Morrison	09/29/92
Margaret Keys v. Crime Victims Compensation Commission	92 CPS 0807	Becton	11/06/92
Rosie W. Harrell v. Administrative Office of the Courts	92 OSP 0846	West	09/17/92
Resteyne M. Wilkinson v. Employment Security Commission	92 OSP 0870	Chess	10/27/92
Robert Aiken v. Department of Correction	92 OSP 0872	Gray	09/25/92

**CONTESTED CASE DECISIONS**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>ALJ</b>	<b>FILED DATE</b>
Daniel N. Jones v. N.C. Victims Compensation Commission	92 CPS 0879	Chess	08/28/92
Paul Hunter v. Dorothea Dix Hospital	92 OSP 0878	Chess	09/29/92
David V. Cates v. Alarm Systems Licensing Board	92 DOJ 0892	Becton	10/05/92
Kiddie Kountry Day Care, Elaine Stephenson v. Public Water Supply System	92 EHR 0901	Becton	10/28/92
Larry E. Foreman, L. Reginald Caroon, Benny C. Leary, Zool Ireland, Mitchie Midgette, and Arthur Leary v. DHR, Division of Marine Fisheries	92 EHR 0908 92 EHR 0909 92 EHR 0910 92 EHR 0911 92 EHR 0912 92 EHR 0924	Gray	10/28/92
Ronnie Campbell v. Department of Environment, Health, & Natural Resources	92 EHR 0921	Reilly	11/16/92
Larry Donnel Williams v. DHR, O'Berry Center	92 OSP 0950	Gray	10/19/92
Tomenah W. Hudson v. Department of Environment, Health, & Natural Resources	92 EHR 0983	Reilly	10/21/92
Heritage Environmental Services, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 1039	Gray	10/27/92
Piedmont Fiberglass Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 1057	West	11/09/92
Jimmie Lee Thorne Jr. v. Victims Compensation Commission	92 CPS 1059	Nesnow	10/20/92

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF ALAMANCE

92 ABC 0574

CLEMON EVANS  
GLAMOR INN

Petitioner,

v.

N. C. ALCOHOLIC BEVERAGE CONTROL  
COMMISSION

Respondent.

**RECOMMENDED DECISION**

This matter came on for hearing on September 29, 1992 in Raleigh, North Carolina before Administrative Law Judge Thomas R. West.

**APPEARANCES**

Petitioner appeared pro se.

Respondent was represented by Chief Agency Legal Specialist, Larry S. Height.

**WITNESSES**

The following testified for the ABC Commission:

Mike Ellington - ALE agent

Sheriff Richard Frye - Sheriff, Alamance County

The following testified for Petitioner:

Clemon Evans

Johnny Bruner

**EXHIBITS**

No exhibits were introduced at the hearing.

**ISSUE**

Respondent, N. C. Alcoholic Beverage Control Commission (hereafter "ABC") denied Petitioner's application for permits to sell malt beverages for consumption on premises and permits for the sale of unfortified wine. ABC disapproved the applications because of:

"Local governmental objections and other evidence concerning the reputation of this location which show that this is not a suitable location to hold ABC permits and that operation of the applicants' business would be detrimental to the neighborhood."

Issue: Did ABC err by denying the applications?

Answer: Yes.

**BURDEN OF PROOF**

The burden of proof is on Petitioner (hereafter "Evans") to show by the greater weight of the substantial evidence that ABC erred by denying the permits.

Based on a preponderance of the substantial evidence admitted the undersigned Administrative Law judge finds the following to be the facts:

**FINDINGS OF FACT**

1. ABC stipulated at the hearing that Evans is a suitable person to hold the ABC permits for which he applied.
2. In early 1992, Evans applied for ABC permits to operate the Glamor Inn. The location is in a racially mixed area of Alamance County. The physical premises are owned by Johnny Bruner.
3. On April 1, 1992, ALE agent Mike Ellington completed the standard investigation of the premises that is performed by ALE when someone applies for ABC permits. Ellington found no problems with:
  - a. The physical layout of the premises:
  - b. Parking.

There are no violations pending against the establishment. Evans has a valid lease agreement with Bruner. Glamor Inn is located more than fifty (50) feet from any school or church.

Evans is a citizen and resident of North Carolina.

4. Subsequent to the ALE investigation, ABC issued a temporary permit to Evans on March 3, 1992.
5. Sheriff Richard Frye is authorized by the Commissioners of Alamance County to respond to the ABC Commission regarding any objections Alamance County might have to the operation of an establishment with ABC permits.
6. Sheriff Frye filed a form propounded by the ABC Commission known as a "Local Governmental Objection Form". Sheriff Frye indicated on the form he did not approve of either Evans or the location.
7. As a result of Sheriff Frye's filing the objection, ABC denied Evan's application for permits. The temporary permits expired approximately thirty (30) days after they were issued.
8. Evans has never held ABC permits prior to the temporary permits issued in this case. During the time Evans held temporary permits, no violations occurred at Glamor Inn. No calls were made to any law enforcement agency regarding Glamor Inn.
9. Sheriff Frye testified that citizens had petitioned him to oppose the issuance of permits at the locations at issue. The sheriff testified he would oppose the issuance of a permit to anyone at that location, but has no objection to Evans. The sheriff further testified that there have been no calls regarding disturbances at Glamor Inn.

The undersigned has no reason to doubt any of the testimony set forth hereinabove.

10. Prior to the time that Evans applied to operate Glamor Inn, an establishment known as "Ne's" was permitted by ABC to operate at the same physical location. "Ne's" was operated by Beatrice Ward. Ward is white. Evans is black.
11. While Ward operated "Ne's", a sign stating "No Blacks Allowed" was posted in the window. The patrons of "Ne's" usually arrived via motorcycle. The patrons of "Ne's" were white.
12. While Ward operated "Ne's", there were two homicides, numerous fights to which the Alamance County Sheriff responded, gunshots and loud music.
13. During the time Evans operated Glamor Inn with ABC permits, it was open from 5 p.m. to 9 or 10 p.m. on weekends, and on Sunday from 1 p.m. to 10 p.m. Evans had food, pool tables and beer.

Evans operates Glamor Inn by himself. Saturday night was his best business period. Approximately thirty (30) people would be in Glamor Inn on Saturday night.

14. Glamor Inn is patronized by blacks, whites and Mexicans.
15. Evans stipulated at the hearing that he is withdrawing his application for unfortified wine.
16. Within one quarter mile of Glamor Inn, four establishments sell beer. The establishments have not been the source of any calls to law enforcement agencies relating to violations of the ABC laws.
17. ABC continues to oppose issuance of permits because of the reputation of the previous owner and the community's concern about operation of the establishment.

Based on the foregoing, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. Evans is a suitable person to hold ABC permits for the sale of malt beverages for consumption on premises.
2. The operation of "Ne's" was detrimental to the neighborhood in which it was located.
3. The operation of establishments with ABC permits is not detrimental to the neighborhood at issue in this case.
4. The operation of Glamor Inn by Evans for the one month during which he held permits was not detrimental to the neighborhood.
5. It is arbitrary and capricious and otherwise erroneous to conclude that the operation of Glamor Inn by Evans would be detrimental to the neighborhood solely because the operation of "Ne's" by Beatrice Ward was detrimental.

Based on the foregoing, the undersigned issues the following:

**RECOMMENDED DECISION**

The ABC Commission should issue a permit to Evans for the sale of malt beverages for consumption at Glamor Inn.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 10th day of November, 1992.

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Thomas R. West  
Administrative Law Judge



**STATE OF NORTH CAROLINA**  
**COUNTY OF JOHNSTON**

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
92 DST 0787

v.

## RECOMMENDED DECISION

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## APPEARANCES

Respondent: Alexander McC. Peters, Associate Attorney General,  
North Carolina Department of Justice, Raleigh, N. C.

Whether the Petitioner is obligated to repay to the Respondent \$1295.17 in retirement benefits received from the Respondent after the Petitioner's retirement and her subsequent part-time employment with Johnston County Community College and Johnston County Public Schools.

The following exhibits offered by the Respondent were received in evidence:

- R1. Computer print-out from the Respondent's file on the Petitioner showing salaries received from February, 1991 through July, 1992.
- R2. Page 15 from handbook, "Your Retirement System/How It Works," effective July 1, 1969.
- R3. Letter date May 16, 1973, from the Petitioner to the Respondent.
- R4. Letter dated May 24, 1973, from Helen Stewart of the Respondent to the Petitioner.

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Petitioner is a 84 year old former school teacher. She retired from employment with the State in 1973.
2. Prior to her retirement, the Petitioner wrote the Respondent and requested that she be sent literature

regarding the retirement system. In response to the Petitioner's request, the 1969 version of the handbook titled, "Your Retirement System/How It Works," was sent to the Petitioner.

3. Page 15 of the retirement handbook contains a section about re-employment by a unit of the Retirement System which reads as follows:

If your re-employment starts or continues **after** you reach age 62 your retirement allowance will be reduced to the extent necessary (if any) so that the sum of your retirement allowance and earnings from employment for any year will not exceed your annual rate of compensation when you retired.

4. The Petitioner does not recall ever receiving a copy of the Respondent's retirement handbook.
5. Since her retirement in 1973, the Petitioner has taught part-time as a substitute teacher for the State and at a community college.
6. As a result of the combined salaries earned by her at her two part-time jobs, the Petitioner exceeded the maximum income that a retiree is allowed to receive from employers participating in the state retirement system.
7. The Petitioner's earning exceeded the maximum allowable amount for the months January through April, 1992.
8. Once the Respondent discovered the problem, the Petitioner's benefits were suspended. The Petitioner, however, received her benefit in the amount of \$1,295.17 for February, 1992 which the Respondent has asked her to repay.
9. The Petitioner was not aware that there was a limit on the amount she could earn working part-time for the state while receiving retirement benefits. She had assumed that her retirement benefit operated similar to Social Security benefits where there is no limitation on the amount earned after an individual reaches age 72.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. North Carolina General Statutes section 135-3(8)c provides that the retirement benefits payable to a person who retires on a service retirement and then is re-employed by an employer participating in the Retirement System must be suspended if the salary earned during the re-employment exceeds the maximum income that a retiree is allowed from employers participating in the Retirement System.
2. Pursuant to section 135-3(8)c, the respondent was required to suspend the Petitioner's benefits during the months that her income exceeded the maximum amount allowed by statute, January through April, 1992.
3. The Petitioner contends that the Respondent's policy of counting state-system earnings but not counting non-state system earnings in calculating reductions in or termination of state retirement benefits violates the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. The requirement that Petitioner's benefits be suspended if her earnings reach a certain level is not a policy decision or regulation promulgated by the Respondent, but a statutory requirement enacted by the legislature. An administrative law judge does not have jurisdiction to rule on the constitutionality of statutes enacted by our legislature. Therefore, the undersigned cannot rule upon the Petitioner's equal protection claim.

4. The Respondent was required, pursuant to the provisions of section 135-3(8)c of the North Carolina General Statutes to suspend the Petitioner's retirement benefits for the period January, 1992 through April, 1992. The provisions of section 135-3(8)c are mandatory and the Respondent is given no discretion regarding the decision to suspend or terminate benefits.
5. The retirement benefits received by the Petitioner for February, 1992 must be repaid to the Respondent.

#### RECOMMENDED DECISION

The Board of Trustees of the Teachers' and State Employees' Retirement System will make the Final Decision in this contested case. It is recommended that the Board adopt the Findings of Fact and Conclusions of Law set forth above and affirm its decision that the Petitioner is required to repay \$1,272.62 in retirement benefits received by the Petitioner for the month of February, 1992. It is further recommended that the Petitioner be allowed to repay the Respondent in six (6) monthly installments.

#### DISCUSSION

The Petitioner maintains that she was unaware of the limitation on the amount she could earn and still receive retirement benefits. The Respondent, having included a reference to the income limitation in the handbook it distributes to employers participating in the Retirement System, appears to maintain that it has no further obligation to inform retirees of the income limitations.

There is an underlying issue in this case of whether there exists a duty on the part of the Respondent to notify the members of the State Retirement Systems of the existence of income limitations on their entitlement to receive monthly retirement benefits, and the extent of the duty, if such a duty exists. There is no North Carolina law directly on point.

It seems to the undersigned that the Respondent should be obligated to do more than include a reference to the income limitation in a handbook. This is especially true when the Respondent has no way of knowing whether or not the handbook actually reaches each member of the Retirement System since it does not distribute the handbook to its members, but relies on the employers to distribute it.

Information as vital as the impact of income earned from re-employment with the State upon one's receipt of monthly retirement benefits should not be disseminated in such a haphazard fashion as that relied upon by the Respondent. In analogous situations, courts from other jurisdictions have required that limitations on benefits be plainly and clearly brought to the attention of the affected individuals, and a booklet briefly outlining limitations was found not to be sufficient notice to the affected parties. See, e.g., Russell v. Bankers Life Company, 46 Cal. App. 3d 405, 120 Cal. Rptr. 627 (1975).

As long as income limitations continue to exist, the Respondent should be required to notify its retired members annually of what the income limitation is and provide a person whom affected persons can contact to obtain answers to any questions that might arise regarding the impact of such limitations on the receipt on monthly benefit checks.

Furthermore, the result required by the law in this case is extremely harsh. Penalizing our senior citizens for continuing to make contributions of their time and valuable knowledge to society is a poor public policy decision and poor use of invaluable human resources.

#### ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the Board makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 9th day of November, 1992.

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Brenda B. Becton  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

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